QUARTERLY REPORT

of the

ATTORNEY GENERAL

of

ALABAMA

For the Period:

From April 1. 1936
Through June 30, 1936

VOL. III

TO ALL STATE AND COUNTY OFFICERS OF ALABAMA:

In accordance with an Act of the Legislature of Alabama found on page 1114 of the General Acts of Alabama, Regular Session, 1935, I am submitting to you the Quarterly Report of the Opinions of the Attorney General of Alabama. This report covers all opinions rendered by the Attorney General from April 1, 1936, through June 30, 1936.

The Act referred to above requires that six copies of this Quarterly Report be sent to each of the Probate Judges in the State and that the Probate Judge shall in turn deliver one volume each to the Clerk of the Circuit Court, the Sheriff, the Tax Collector, the Tax Assessor, and the County Superintendent of Education.

Respectfully,

A. A. CARMICHAEL,
Attorney General.

WETUMPKA PRINTING CO.
Printers and Publishers
Wetumpka, Ala.
1936

OPINIONS

April 2, 1936.

Dr. J. A. Keller,
Supt. of Education,
Capitol.

Schools—Under rural school house building law a new application cannot be substituted for a former one when the funds for said repair have been incumbered by said former application.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"I am in receipt of a letter from Superintendent James N. Castleberry enclosing resolution of the Autauga County Board of Education, as per copy attached.

"You will note the resolution states that the trustees and patrons of the Mt. Sinai School were unable to carry out the requirements of the law in repairing the roof on their school building, application for state aid on which was approved by me on August 31, 1935, and state funds in the amount of $75 encumbered, being one-half the cost of the repairs. Since the patrons are unable to comply with the terms of the application, as outlined above the Autauga County Board of Education requests me to cancel this application and approve an application for the same amount for equipping the Marbury-Mt. Creek school.

"Please let me know if in closing encumbered funds under the old rural schoolhouse building law I would be justified in approving a new application to take the place of a former one."

In reply I wish to advise that in my opinion your question must be answered in the negative. In my judgment the provisions of law providing for the rural schoolhouse building fund must be strictly followed (See School Code of 1927, Section 370 through 386 as amended). In my opinion a new application for the equipping of the Marbury-Mt. Creek school would have to be filed and approved and a new appropriation made.

I refer you to an opinion of the Attorney General, addressed to Hon. A. F. Harmon, State Superintendent of Education, under date of July 5, 1934, reported in office edition, Vol. 18, page 30, where the converse of this proposition is discussed by the same principles of law are considered. A copy of said opinion is enclosed for your convenience.

Very truly yours,
A. A. CARMICHAEL,
Attorney General.

April 2, 1936.

Hon. Henry S. Long, Chairman,
State Tax Commission,
Capitol.

Attention Mr. Ray Henson

Schedule 158.13 of the Revenue Code of 1935 applicable to trailers.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 13, 1936, in which you request my opinion as to whether Schedule 158.13, 1935 Revenue Code applies to trailers as well as motor vehicles.

In my opinion your inquiry should be answered in the affirmative.

Schedule 158.13 is as follows:

"(a) One-half of the license herein provided for shall be paid plus One Dollar ($1.00) where the motor vehicle is acquired or brought into the State on or after April 1st of any year, or is not used or operated between the period from October first through March thirty-first following. The payment of the registration fee or license tax on motor vehicles or trailers shall be evidenced by the delivery to the party paying the same of numbered license tags which shall be placed in a conspicuous place, in an upright position, right side up, on the rear of the automobile, when a semi-trailer truck is operated, one tag on the rear of the semi-trailer. (b) It shall be a misdemeanor, punishable by a fine of not less than ten dollars and not exceeding twenty-five dollars ($25.00) for each offense, to display the tag in any other place or in any other manner than as herein provided. (c) The State Tax Commission shall provide tags for all motor vehicles, and shall also provide receipts in triplicate, one of which shall be retained by the probate judge, one shall be delivered to the person paying the license fee, and one legible copy shall be mailed by the probate judge to the State Tax Commission on the day the license was issued. (d) Every part of each receipt shall bear the same number as the tags delivered to the licensee. These receipts shall be prepared in the form to be determined by the State Tax Commission and delivered to the several probate judges of the several counties of the State, under such rules and regulations as may be prescribed by the State Tax Commission; and the State Tax Commission shall have power to prescribe rules and regulations concerning the application for and delivery to the licensee of the tags and receipt required by this Act. Provided, however, that the automobile licensee shall be required to state in his application where he proposes to use his automobile, whether for private use or for commercial purposes. (e) The tags furnished for commercial vehicles, except those used or rented by a U-Drive-It or similar system, shall be of a different design from those used for Private or Pleasure cars. (g) In applying for license for buses, taxicabs, U-Drive-Its, or like motor vehicles, or jitney-buses, such application shall give the seating capacity and the weight of the vehicle."

I call your attention to Schedule 158, defining the words or phrases used in Article XIII. Sub-section (a) of Schedule 158, is as follows:

"Schedule 158. (a) 'Motor Vehicle': Every vehicle, as herein described which is self-propelled, **or which is drawn by a self-propelled vehicle."**

You will note that this definition of "Motor Vehicles" includes the commonly used definition of "trailer" i. e., "drawn by a self-propelled vehicle". Accordingly it is my opinion that Schedule 158.13, supra, is applicable to trailers.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 2, 1936.

Hon. C. E. Sellers,
Tax Collector,
Pike County,
Troy, Alabama.

Poll tax: Under Section 3034 of the 1923 Code of Alabama a tax collector is prohibited from receiving and receipting for poll tax after the first day of February and before the first day of next October, although he has misinformed a taxpayer as to the amount of poll taxes due.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 19, 1936, in which you state:

"On January 31st of this year, Mrs. A who was born in January 1901 and who would have been twenty-one years old in January 1922, came to my office to pay her poll tax.

"She desired to pay for each and every year from the time she was twenty-one to and including 1935. From some reason I miscalculated the time and did not collect for the year 1922. In other words, she paid for the years 1923 to 1935 inclusive.

"In making the polling list this error was detected by the Probate Judge and her name was not placed on it as a qualified voter as was her desire.

"She came to my office very much perplexed over the error, not only lamenting the fact that she could not vote, but that she had paid out that amount of money to no effect and has asked me for some way that is legal in order that she may be a qualified voter as was her wish.

"Not knowing anything that I could do for her, I went to Hon. Wm. L. Parks, Judge of our Circuit Court and stated the case to him. His opinion is: That Mrs. A. was desirous of becoming a qualified voter, by paying a poll tax for each year from the time she became twenty-one years old to and including the year 1935, that it was no fault of hers, but the fault of the tax receiver in making his calculation, and that I can legally receive the money for the year 1922 and receipt her for same which will give the Probate Judge the right and authority to place her name on the polling list."

It is my opinion that you, as Tax Collector, could not legally receive and receipt for the poll tax due for the year 1922, after the first day of February and before the first day of next October.

I call your attention to Section 3034 of the 1923 Code of Alabama, which is as follows:

"3034. Time when receipts may be given.—After the first day of February and before the first day of the next October, the tax collector shall have no authority to receive or receipt for poll taxes due by any person."

The fact that Mrs. A. acted in good faith, or that the tax collector misinformed her, is immaterial. There was no legal duty on the tax collector to

give her information upon the subject. The duty was upon her to tender to the tax collector the full amount of the poll tax due by her and upon the tax collector when so tendered, to receive it and give her a receipt for each of the years so paid.—Biennial Report of Attorney General 1928-1930, p. 891.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 2, 1936.

Mr. J. E. McAdory,
Deputy Tax Assessor,
Bessemer, Alabama.

Taxation—Assessment of stocks of goods etc. Penalty—no penalty is provided for failure to make return for assessment of stocks of goods, wares and merchandise for the **current year**, as is required to be made by subsection (D) of Section 10 of the 1935 General Revenue Act.

It is the duty of the Assessor to assess such property upon discovery thereof.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of February 24th, in which you state:

"I request an official opinion as to whether or not a delinquent fee and ten per cent penalty are added to an assessment made for three-fourths or one-half year's taxes. If so, at what time are the fee and penalty incurred? For example, an individual went into business in January. He would be taxed for three-fourths year and at the present date has not made an assessment."

In reply I call to your attention Subsection (d) of Section 10, of the General Revenue Act of 1935, which provides:

"(d) All stocks of goods, wares and merchandise, the assessment to be on the average amount on hand during the preceding year, except in cases where business is commenced on or after October 1st of a current year, and in such cases the assessment to be on the capital actually employed in the business and apportioned as hereinafter provided, but the amount so assessed for any whole year shall in no case be less than the capital actually employed in the business, and this shall include all goods, wares and merchandise kept on plantations or elsewhere, or by railroad companies or persons, for sale or to be dealt out to laborers or employees for profit, or on account of their wages, and shall include all goods, wares, and merchandise offered for sale by any person commencing business subsequent to the first day of October of a current year, but in such case the tax shall be apportioned according to the date at which the business was commenced, so that if commenced, after the 1st day of January the tax shall be three-fourths (3/4) of the tax for the whole year; if commenced after the first day of April the tax shall be one-half (½) of the tax for the whole year; provided that the assessment herein provided for shall not include products raised on the farms in the hands of the original producers. If the person, association or corporation, receiver or trustee carrying on such business shall fail to make

return of the amount of stock of goods, wares and merchandise as provided by law, or if the county tax assessor is not satisfied with the return made, in order to make proper assessment, he shall have the right to demand a copy of the last inventory made of such stock of goods, wares or merchandise, and may also by inquiry of persons believed to have a knowledge of the subject obtain information as to the probable average amount of such stock and from such information may assess the same upon his best judgment."

This provision is listed under the subject of taxation and does not provide the details of the assessment other than to instruct the Tax Assessor to make demand for the information. Section 25, of the same Act provides a fee of fifty cents for the Tax Assessor for making the demand on the taxpayer to return his list of property.

By Section 41, the Tax Assessor is required to make a demand upon all taxpayers who have failed to make return by the thirty-first of December. This contemplates assessments which should have been made as of October 1st, and apparently does not provide for cases such as you suggest where the property does not come into being for taxable purposes until after January 1st.

Section 44 provides that where the Tax Assessor on demand has failed to receive the list of property he shall assess the same and add a penalty of 10 per cent. This likewise has reference, I think, to the preceding provisions relating primarily to property which is assessable as of October 1st.

It would appear that unless Section 25 is broad enough to provide for a demand in cases of this sort, that the law has made no provision, and certainly I do not find any provision providing a time in which such property should be listed after the party begins business.

Under the rule of strict instruction against the State I am of the opinion that the demand fee and the 10 per cent penalty are not chargeable in cases of this sort.

It is however, none the less the duty of the Tax Assessor to list such property for assessment whenever he discovers any.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 3, 1936.

Hon. Henry S. Long, Pres.,
State Tax Commission,
Capitol.

Attention Mr. R. O. Billings.

Taxation—Excise tax on financial institutions. Where a bank or other financial institution is absorbed by another bank or financial institution or goes out of business prior to January 1, it is not liable for the excise tax which is required of all financial institutions engaging in business in this State.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 17 in which you state:

"The First National Bank, Birmingham, Alabama, has raised a very interesting question with reference to Article 12 of the 1935 Revenue Code covering the Excise Tax on Financial Institutions.

"During the calendar year 1935, the First National Bank of Birmingham converted several of its affiliated banks into branches of the First National Bank of Birmingham. These affiliated banks had each filed an Excise Tax Return for the calendar year 1935, and the question arises, whether or not, they are liable for Excise Tax for 1936 covering that part of their operations during 1935 as independent banks.

"It would be appreciated if you will give us a prompt ruling on this question."

In reply, I call your attention to Sections 346.3 and 346.4 of the General Revenue Act of 1935, which provide in part:

"Section 346.3 (a) Levy and Review. Every such financial institution shall pay to the State annually for each taxable year **an excise tax for the privilege of engaging in this State.** * * * measured by its net income for such taxable year at the rate of **6 per cent** of such net income." Section 346.4 provides in part:

"The excise tax hereby levied and to be assessed shall be payable within thirty days of notice of assessment thereof by the State Tax Commission **for the privilege of engaging in such business within this State during the current State tax year and during each State tax year thereafter."**

It seems that these provisions definitely determine that the excise tax is payable in advance for the privilege of engaging in business during the current year in which paid, even though the measure of the tax is the net income of the preceding year. The specific terms of the statute appear to settle this but it is perfectly consonant with the philosophy and purpose of the tax.

The tax is described and has been held to be an excise tax. An excise tax is a charge which the State makes for the privilege of engaging in a certain type of business. Ordinarily it is a condition precedent to the right to do such business. It is therefore, my conclusion that the liability of the tax is of January 1 of each calendar year though the taxpayer is allowed until the 10th day of April to make his return, and a subsequent period is allowed him for the payment of the tax. While the tax is measured by the income for the preceding year, yet the privilege granted is for doing business during the current year.

Applying this to your statement of facts, it is my judgment that affiliated banks which have been converted into branches of the First National Bank, but which were not independent banks as of January 1, 1936, are not liable for returns or the payment of tax for the privilege of engaging in business in the year 1936. Of course, the First National Bank should make returns showing the entire net income received by it during the calendar year 1935 including the income received by the various branch banks after they were converted from independent institutions to branches of the First National Bank. Attention is called to Section 346.5 providing for manner of proration where the business is conducted in more than one municipality or county.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 3, 1936.

Hon. I. T. Quinn, Commissioner,
Department of Conservation of Game, Fish and Seafoods,
Capitol.

Game and Fish—Expense allowance of Chairman of Alabama Oyster Commission governed by Act No. 87, H. B. 6, approved March 23, 1933, (Acts 1933, p. 81). Expense allowance of Commissioner and employees of Department of Conservation of Game, Fish and Seafoods and members of Conservation Board governed by Act No. 240, S. 226, approved August 12, 1935, (Acts 1935, p. 632).

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of January 7, 1936, in which you present the following:

(1) Is the Chairman of the Alabama Oyster Commission limited to and bound by the terms of Act No. 87, H. B. 6, approved March 23, 1933, (Acts 1933, p. 81) relative to reimbursement for all traveling expenses incurred in the performance of his official duties as such?

(2) Are the Commissioner and other employees of the Department of Conservation of Game, Fish and Seafoods limited to and bound by the terms of Act No. 87, H. B. 6, approved March 23, 1933, (Acts 1933, p. 81) relative to reimbursement for actual expenses when traveling within or without the State in the discharge of the duties of their offices?

(3) Are the members of the Conservation Board limited to and bound by the terms of Act No. 87, H. B. 6, approved March 23, 1933, (Acts 1933, p. 81) relative to reimbursement for actual expenses of travel, meals and lodging while in the performance of their duties as members of such Board?

Act No. 87, H. B. 6, approved March 23, 1933 (Acts 1933, p. 81) provides as follows:

"Section 1. The maximum amount allowable to persons traveling in the service of the State of Alabama or any of its agencies or institutions for expenses other than actual expense of transportation shall be $3.00 per diem."

This Act controls the expense allowances of persons traveling in the service of the State, or any of its agencies, unless there are later Acts relating to certain State agencies which effect a repeal of same insofar as those certain agencies are concerned. The question then presents itself as to whether or not the Act providing for the expense allowances of the officials mentioned in your inquiries effect a repeal of Act No. 87, supra, insofar as those officials are concerned.

The Alabama Oyster Commission was created by Act No. 226, H. B. 569, approved July 17, 1935, (Acts 1935, p. 618). The Commissioner of Game and Fisheries is made Chairman of the Commission. The only reference to expense allowances in said Act is found in the last sentence of Section 2, which is as follows:

"* * * The associate members of the Commission shall not be entitled to compensation for their services, but shall be entitled to re-

imbursement for all expenses incurred in connection with the performance of their duties."

This office in an opinion to the Chairman of the Oyster Commission on October 15, 1935, (Quarterly Report Vol. 1, p. 74) held that the associate members of the Oyster Commission were entitled to actual expenses incurred while performing official duties. This holding was based on the theory that the above quoted portion of Section 2 of Act No. 226, supra, together with the repealing clause of said Act (Section 26) effected a repeal of Act No. 87, supra, insofar as the associate members of the Alabama Oyster Commission were concerned. It will be noted that Act No. 226 was an Act of later adoption than Act No. 87, supra.

The above quoted portion of Section 2 of Act No. 226, supra, refers only to the associate members of the Commission. No reference is made to the Chairman in respect to an expense allowance. In my opinion, he would be governed by the provisions of Act No. 87, supra. It, therefore, follows that your first inquiry should be answered in the affirmative.

I am of the opinion that your second and third inquiries should be answered in the negative.

Act No. 240, S. B. 226, approved August 12, 1935, (Acts 1935, p. 632) provides for the Department of Conservation of Game, Fish and Seafoods. It also provides for the Commissioner of said department and its employees. It likewise provides for a Conservation Board.

The expense allowances of the Commissioner and the other employees of said department are provided for in Section 7 of said Act. Section 7 provides as follows:

"Section 7. The salary of the Commissioner and all other employees of the Department shall be fixed as hereinafter provided and shall be paid monthly out of the Game and Fish Fund, in the same manner as other State officers and employees are paid, and they shall be allowed reimbursement for actual expenses when traveling within or without the State in the discharge of the duties of their offices, said allowances to be payable out of the Game and Fish Fund. * * *"

The expense allowances of the Conservation Board are governed by Section 11 of said Act. Section 11 provides in part as follows:

"* * * The members of the Board shall not be paid any salary as members of such Board, but shall be reimbursed for actual expenses of travel, meals and lodging while in the performance of their duties as members of such Board."

Section 64 of said Act provides as follows:

"Section 64. All laws and parts of laws in conflict with the provisions of this Act are hereby expressly repealed."

The above quoted sections relative to the expense allowances in question are in conflict with Act No. 87, supra, Act No. 240 is of later adoption than Act No. 87. By virtue of the repealing clause, above quoted, it follows that Act No. 240 supersedes and repeals Act No. 87 insofar as the officials refer-

red to in Act No. 226 are concerned.— **Opinion of Attorney General to Chairman of Alabama Oyster Commission, October 15, 1935,** supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 3, 1936.

Hon. E. C. Whelan,
License Inspector, Jefferson County,
Room 418 Court House,
Birmingham, Alabama.

Non-resident operating automobile or truck (not for hire) in State of Alabama under Schedule 158.15, Revenue Bill 1935, on October 1, 1935, and leaving State before period of thirty days from date of entering not required to purchase Alabama tag though returning to State thirty days later.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 27, 1936 in which you request my opinion as follows:

"I wish you would give me your opinion on a non-resident operating an automobile or truck (not for hire) in the State of Alabama under Schedule 158.15, 1935 Revenue Act.

"If a non-resident owner of an automobile or truck operates an automobile or truck (not for hire) in this state on October 1, 1935 and leaves the state before a period of thirty days from date of entering the state and returns to this state after the thirty day period first entering this state is up, are they required to purchase an Alabama tag on the day of entering this state the second time? If he fails to purchase the tag the first day he enters this state on his second trip as stated above, is he delinquent?"

In my opinion your inquiry should be answered in the negative.

Schedule 158.15 of the Revenue Bill of 1935 provides in part as follows:

"The provisions of the foregoing sections relative to registration and display of registration numbers shall not apply to a motor vehicle owned by a non-resident of this State and not used for hire in this State, provided that the owner thereof shall have complied with the provisions of the law of the foreign country, state, territory or Federal district of his residence relative to registration of motor vehicles and the display of registration numbers thereon, and shall conspicuously display his registration number as required thereby."

The purpose of this Section is to grant reciprocal rights to citizens of other states who pass through Alabama or remain here temporarily, where such persons have complied with the laws of the jurisdiction to which they are subject. To require a license of the party mentioned in your inquiry would defeat the very purpose of this Schedule.

I call your attention to an opinion rendered by this office to the State Tax Commission on September 28, 1929 (Biennial Report Attorney General

1928-1930, page 639) holding that the exemption granted non-resident owners of motor vehicles is a reciprocal exemption and includes motor vehicles used by visitors sojourning in this State or passing through the State.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 3, 1936.

Hon. A. H. Collins, Commissioner,
Department of Public Welfare,
Montgomery, Alabama.

Department of Public Welfare—

Amendments of Old Age Assistance Act held constitutional.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your request of March 25, 1936, as follows:

"I am handing you herewith an amendment Senator Simpson has offered in the Senate amending the Old Age Assistance Act. Will you give me an opinion as to whether or not it is constitutional?

"The Act as it now stands has been declared constitutional by you and approved by the Federal Social Security Board. Any change in the Act will have to have the approval of the Social Security Board. They will wish to know if you have advised as to its constitutionality, therefore, the inquiry."

In reply I wish to advise that Section 88 of the Constitution provides as follows:

"It shall be the duty of the legislature to require the several counties of this state to make adequate provision for the maintenance of the poor."

You will note that the constitutional provision here noted imposes the duty upon the legislature to require county governing bodies to provide for paupers within their respective counties. I have carefully examined the amendments offered by Senator Simpson to the Old Age Assistance Act and found no provision in these amendments that in my opinion violates Section 88, supra, or any other Section of the Constitution. The law itself as found in the Acts of 1935, page 967 provides that the various counties in the State shall provide funds for the promotion of the purposes of the Old Age Assistance Act and the amendments offered do not change or affect the duty imposed upon the county, but are purely administrative in their nature.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 3, 1936.

Hon. Fred H. Price,
Clerk of the Circuit Court,
Autauga County,
Prattville, Alabama.

Special Judge for the Civil and Criminal Court of Autauga County does not have to be learned in the law.

Civil and Criminal Court of Autauga County, Alabama, is not a Court of Record.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 9, 1936, in which you state:

"The question has arisen in the appointment of a Special Judge for the above Court as to whether or not such Judge must be qualified under Section 154 of the Constitution of Alabama, 1901, Code of Alabama, 1923. In short, I want to know whether or not such Judge must be **learned in the law** within the meaning of this clause, and whether or not this Court is a **Court of Record.**"

Answering your first question, it is my opinion that the Special Judge for the Civil and Criminal Court of Autauga County does not have to be learned in the law.

I call your attention to Sections 11 and 22 of Act No. 158, H. B. 548, approved June 27, 1935, (Local Acts 1935, p. 82) which are as follows:

"Section 11. The Judge of said Court shall, at the time of his election, or appointment, be a qualified elector, and shall have been a bona fide resident of said County for at least twelve months next preceding his appointment or election."

"Section 22. In case the Judge of this Court is temporarily absent from the State, or is sick and unable to attend Court or disqualified to act, the Probate Judge shall **appoint a suitable person** to hold said Court for one day only in each month, and the Judge so appointed shall receive for his services the sum of $3.00 per day payable out of the same fund and in the same manner as the regular Judge is paid."

In my opinion a suitable person as used in Section 22, does not mean a person learned in the law.

Act No. 158, H. B. 548, approved June 27, 1935, (Local Acts 1935, p. 82) repeals Act No. 379, H. B. 892, approved September 26, 1923, (Local Acts 1923, p. 245.)

"Where a new law, whether in the form of an amendment, or otherwise, covers the whole subject matter of a former law and is inconsistent with it, and evidently intended to supersede and take the place of it, it repeals the old law by implication." Allgood v. Sloss Sheffield Steel and Iron Co., 71 So. 724, 196 Ala. 500.

Answering your second question, it is my opinion that the Civil and Criminal Court of Autauga County is not a Court of Record. I call your at-

tention to Section 2 of Act No. 158, H. B. 548, approved June 27, 1935, (Local Acts 1935, p. 82) which is as follows:

> "Section 2. That said Court and the Judge thereof shall have and exercise all the jurisdiction now conferred or which may be conferred by law on Justice of the Peace in Criminal cases, and in addition thereto shall have concurrent jurisdiction of the several county courts of the State of all misdemeanors."

The Supreme Court of Alabama in the case of Willett v. Weaver, 87 So. 601, 205 Ala. 268, held that by the common law, a justice of the peace had no civil jurisdiction and his court was not a court of record. In the case of Cook, County Treasurer, v. Burke, Judge, 177 Ala. 155, 58 So. 984, the Court decided that Probate Judges presiding in County Courts for trial of misdemeanors are not Judges of Courts of Record within the meaning of Section 154 of the Constitution, which requires Judges of Courts of Record, except Judges of Probate Courts, to be learned in the law.

In the case of Ex Parte Thistleton, 152 Cal. p. 255, the Court defined a Court of Record as "a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding to the course of the common law."

In the case of Ledwith v. Roalsky, 155 N. E. 688, the Court of Appeals of New York said:

> "It is clear that the selection by the organic law of a local subdivision of the state known as a 'county,' for and within which to establish a court, does not make the functions of the court, county functions, or the officers of the court, county officers. A court of record is essentially not an office; it is an institution, an entity, or agency within itself, invested with certain functions, just as the county is another agency within itself, invested with other duties to perform."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 3, 1936.

Hon. F. B. Thompson,
Judge of Probate, Clay County,
Ashland, Alabama.

Compensation of Members of Commissioners Court of Clay County held to properly be paid from gasoline excise tax but not from road and bridge fund, under Act No. 312, H. B. 575 (Local Acts 1935, p. 189).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 3, 1936, in which you request my opinion as follows:

> "Will you kindly render an opinion and forward same to me at your earliest convenience concerning House Bill No. 575, passed at the General Session of 1935, and approved September 2, 1935. I desire to know, if under the terms of this law, the Commissioners Court can pay their salaries out of Road and Bridge fund of this county.

"At the present time the Commissioners are being paid out of the General fund and my understanding of this law is that, it undertakes to provide that the Commissioners Court may designate the fund out of which their salaries may be paid.

"It is the desire of the Court to pay these salaries out of the Road and Bridge fund and, or the Gasoline and Oil Tax if this is legal under the law above mentioned."

Section 3 of Act No. 312 is as follows:

"Section 3. That the compensation of each member of said County Commission shall be the sum of $37.50 per month and shall be paid out of any monies in the County Treasury **which shall be designated and set apart by the County Commission for the payment thereof,** such compensation to be in full payment of all services of said members of said County Commission, including their services as a Board of Review."

In my opinion, while it would be unlawful for the Commissioners Court to be paid from the Constitutional Road and Bridge Fund, however, that part of the gasoline excise tax granted to the County by Schedule 156.9 of the Revenue Bill might lawfully be used for the purpose mentioned in Section 3 of Act No. 312 (Local Acts 1935, page 189).

You will note that Section 215 of the Constitution of 1901 provides in part that:

" * * * provided, further, that to pay any debt or liability now existing against any county, incurred for the erection of the necessary public buildings or bridges, any county may levy and collect such special taxes as may hereafter be authorized by law, which taxes so levied and collected shall be **applied exclusively** to the purposes for which the same were so levied and collected."

I call your attention to an opinion of this office of May 1, 1935, to Hon. John T. Frazier, Judge of Probate, Opelika, Lee County, (Office Edition, Opinion of Attorney General, Book 4, p. 93), wherein it was held that the per diem of members of the Court of County Commissioners is payable out of the general fund of the County and not out of the Road and Bridge Fund levied under authority of the Constitution.

However, as stated above, the Commissioners Court may properly be paid from one-third of the proceeds of the excise tax authorized by Schedule 156.9. You will note that Schedule 156.9 provides that "such funds when received by the County Treasurer shall be covered into the County Road and Bridge Fund and shall be expended **exclusively** in the construction, maintenance and repair of the public roads and bridges in such county."

In my opinion, the Local Act now under discussion repeals, as to Clay County, that provision of Schedule 156.9 which demands that the excise gasoline tax funds be expended **exclusively** in the construction and maintenance of the roads. Accordingly, the funds mentioned in Schedule 156.9 may be used to compensate the members of the County Commission of Clay County.

It must be understood that anything herein said expresses an opinion as to the Constitutional validity of the said Local Act as a whole.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 4, 1936.

Hon. Jos. E. Jones,
County Solicitor,
Conecuh County,
Evergreen, Alabama.

Under local Act approved July 29, 1927, providing for the compensation of the County Solicitor of Conecuh County, such solicitor is entitled to his fees in cases where the services were actually rendered and the costs actually taxed, although the costs are not paid into the County Treasury until after the end of the year in which such services were rendered and such costs taxed. Under this Act, the solicitor is entitled to collect his fees, even though they are not paid until after the end of the year in which the services are rendered and the costs taxed.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of March 19, as follows:

"As County Solicitor of Conecuh County, Alabama, my salary is paid from solicitor's fees paid into the Solicitor's Fund of Conecuh County, Alabama, from cases convicted in the County Court of Conecuh County, Alabama, and cases convicted in the Circuit Court of Conecuh County, Alabama, on appeal from the County Court of Conecuh County, Alabama.

"I desire to know if the solicitor's fees from cases convicted in previous years and not paid into the solicitor's fund until the succeeding year can be used to pay the County Solicitors salary for the preceding year where same was not paid in full?

"For example, can solicitor fees under convictions obtained in the County Court in 1934 and not paid into the Solicitor's Fund until 1935 be applied to the County Solicitor's salary for the year 1934 where the solicitor's salary was not paid in full for the year 1934?"

Under date of February 5, 1936 you inquired whether the excess of solicitor's fees collected in the county court of Conecuh County in any one year could be used to supplement a deficiency of fees collected in other years, and we held that such excess of solicitor's fees collected could not be used to supplement a deficiency of fees collected in other years. In that opinion, it was our intention to rule only on one proposition, namely: that the excess of the fees collected in any one year cannot be used to supplement a deficiency of another year, in compensating the county solicitor.

You now ask an entirely different question: Whether or not the solicitor may receive fees in cases where the solicitor has actually rendered the service and where the fees have been taxed, but where, through no fault of the solicitor, the fees are not actually paid into the County Treasury until after the end of the year in which the services were actually rendered and the fees taxed.

It is true that the Act refers to fees so "taxed and paid." However, I do not think the Legislature ever intended that the solicitor should be denied his compensation in cases where the solicitor has rendered the services and where the fees have been taxed, but not paid until after the end of the

year in which the services were rendered and the fees taxed. Such a rule would be manifestly unfair. It is a matter of common knowledge that fees taxed in county courts are not collected, in many instances, for several months after the solicitor has performed the services and after the fees have been taxed.

Let us suppose that the county court of Conecuh County disposes of ten criminal cases in the month of December, and that in those cases convictions are had, services actually rendered by the County Solicitor and the costs taxed. Let us suppose that in all ten of these cases appeals are taken to the Circuit Court and that the cases are not reached for trial in the Circuit Court until March of the following year. I am unable to conceive that the Legislature intended that the County Solicitor should lose his fees in these ten cases merely because the costs are paid in the succeeding year instead of the year in which they were taxed in the County Court. Such a holding, as indicated above, would be manifestly unfair to the County Solicitor and I do not believe the Legislature intended that such should be the case.

It is my judgment that, under the local act in question, when a county solicitor actually renders the services and where the costs are actually taxed, he is entitled to his fees, within the limitations fixed in the Act, no matter when they are paid. It is conceivable that every criminal case tried in the county court may be appealed to the higher courts of this State and that the costs, as a matter of law, would not be payable until after the cases are disposed of in the higher courts. Are we to say that under these circumstances, the county solicitor cannot receive from the County Treasury the fees actually rendered and taxed, merely because, through no error on his part, but because of delay occasioned by appeals, the costs are not paid into the County Treasury until after the end of the year in which the cases were tried, the services actually rendered and the fees taxed in the County Court? I do not think so. If the solicitor has actually rendered the service and the court has taxed the costs, then it is my judgment that the solicitor is entitled to his fees no matter when the fees are paid. I do not believe the Legislature ever intended to enact a local law, under the terms of which a county solicitor would be compelled to work a whole year, or a half year or three months of a year, for nothing.

Let us suppose that during the last six months of a given year a county solicitor prosecutes and receives convictions in fifty criminal cases in county court and that the costs are taxed. These cases may be appealed or may be delayed by confessions or in other ways. And let us suppose further that, because of these delays, confessions and appeals, the costs in none of these cases are paid until the second month of the succeeding year. To hold that under such circumstances the solicitor would not be entitled to his fees, within the limits set out in the Act, would be to hold that the Legislature intentionally and purposely enacted a law which is manifestly unjust and unfair. I do not think the Legislature ever intended to do such a thing. See opinion to Hon. William G. Lindsey, Deputy Solicitor, Washington County, Chatom, Alabama of September 17, 1935, Office Edition 6-A, page 198, copy of which opinion is inclosed; also Purifoy vs. Godfrey, 105 Ala. 142.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 4, 1936.

Hon. J. B. Van Valkenburgh, Chairman,
Madison County Board of Commissioners,
Huntsville, Alabama.

County Governing Body may make donations to public schools under Act No. 602, H. B. 751, (General Acts 1931, page 687).

Opinion by the Attorney General.

Dear Sir:

I wish to acknowledge receipt of your letter of March 30th, 1936, which letter is addressed to Senator Shelby Fletcher. My understanding is that you desire the letter to Senator Fletcher considered as a request for an official opinion from you. I also acknowledge receipt of the resolution of your County Governing Body which resolution is as follows:

"At a special called meeting of the Madison County Board of Commissioners, the following resolution was adopted:

"It was moved by Mr. Fleming, and seconded by Mr. Nance, and unanimously adopted, that the Madison County Board of Commissioners will donate to the eight accredited schools in Madison County up to $500.00 each, provided local communities match said funds; said appropriation subject to the opinion of the Attorney General declaring this action legal under the budget law as an emergency appropriation to be made.

"This is to certify that the above is a true and correct copy of minutes spread upon Minute Book No. 3, page 34, of Madison County, Alabama, this the 30th day of March, 1936."

In my opinion the Madison County Board of Commissioners has ample authority to make the donations mentioned in the resolution enclosed by you.

Your attention is directed to Act No. 602, H. B. 751, approved August 4, 1931 (General Acts 1931, page 687) which is as follows:

"To authorize appropriations for the support of the Public Schools out of the funds in County Treasury, by the governing body of the several Counties.

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"Section 1. The Courts of County Commissioners or Boards of Revenue of the several Counties of Alabama are hereby authorized at any meeting of said Court in any Calendar year to appropriate any funds they may deem proper and expedient out of the general funds of the County Treasury for the support of the Public Schools within said County.

"Section 2. Any appropriations heretofore made by a Court of County Commissioners or Board of Revenue or other like governing body of any funds for the support of the Public Schools of said County are hereby ratified.

"Section 3. All laws and parts of laws in conflict herewith are hereby repealed.

"Section 4. If any Section of this Act shall be held to be invalid by any Court such holding shall not affect any other Section which is not in and of itself, unconstitutional."

"Approved August 4, 1931."

This Act specifically grants authority to a county board of commissioners to make appropriations of the nature mentioned in the resolution, supra.

I further call your attention to the following opinions of this office which support the conclusion reached above:

Opinion of the Attorney General, Dec. 15, 1933, to Hon Oscar L. Thompson, County Attorney, Dothan, Alabama; (Opinion of the Attorney General, Office Edition, Vol. 16, page 220);

Opinion of the Attorney General, Mar. 23, 1933 to Hon. L. H. Reynolds, Judge of Probate, Chilton County, Clanton, Alabama, (Biennial Report of the Attorney General 1932-34, p. 195.)

See also Opinion to Hon. E. J. Garrison, Judge of Probate, Clay County, Ashland, Alabama, Oct. 22, 1931, (Biennial Report of Attorney General 1930-32, p. 507.)

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 6, 1936.

Hon. Walter K. McAdory,
Chief Alabama Highway Patrol,
Montgomery, Alabama.

A minor though he be under 16 years of age and is prohibited from procuring a driver's license under the Drivers License Act of 1935, may be prosecuted under Section 10 of said Act if he does drive an automobile without a license.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 18, 1936 in which you request my opinion as follows:

"Kindly render me an opinion on the following question:

"Where juvenile under the age of sixteen years operates a motor vehicle on the highways of this State, would he commit a misdemeanor inasmuch as Section 10 of the Driver's License Act sets out 'any person of whom a driver's license is required who operates a motor vehicle on the public highways in this State without first obtaining such license shall be guilty of a misdemeanor'?

"The question involved is simply this—a juvenile under this section is not required to obtain a driver's license and if contacted operating motor vehicle, would he be charged in violation of this Act?"

I am of the opinion that all persons who drive a motor vehicle upon any public highway of Alabama must have a driver's license.

I call your attention to Section 1 of an Act approved September 2, 1935, General Acts 1935, page 756, which is as follows:

"Section 1. That every person, except those hereinbelow exempted, before operating or driving any motor vehicle upon a public highway in this State, shall procure a driver's license. The first license shall be obtained between October 1, 1935, and November 15, 1935, and shall expire September 30, 1936, and a like license or renewal thereof shall be obtained annually thereafter."

You will note the above Section says "every person except those hereinbelow exempted". This last clause has reference to persons exempted by the Act and, of course, does not mention minors under 16 years of age, therefore, minors are not exempted. It is true that Section 4 of said Act does say that such license shall not be issued to a minor under 16 years af age, but this does not exempt him, but is a prohibition against such persons but if he does drive a motor vehicle without a license, he violates Section 10 of the Act, supra.

The fact that the law prohibits him from procuring a license if he is under 16 years of age does not authorize him to drive without license. In other words, the prohibition he is under cannot become an exemption.

I call attention again to the fact that the above quoted statute says "every person not exempted must procure a license before he can legally drive a motor vehicle upon the public highways of the State," and if he does drive without this license, no matter what his age may be, he can be proceeded against under Section 10 of the Act, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 8, 1936

Hon. J. A. Keller,
State Superintendent of Education,
Montgomery, Alabama.

County Superintendents of Education—A person who has taught in a rural high school for a period of twenty-five months and three weeks during the school years 1932 through 1935, where the average rural high school year was seven months and four days, and when the average rural high school year for the State was seven months and sixteen days, has sufficient teaching experience to qualify under Act No. 511 H. B. 546, approved September 6, 1927 (General Acts 1927, p. 606) as a candidate for election to the office of County Superintendent of Education.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 2, 1936, in which you state:

"As State Superintendent of Education, I request a written opinion on the following proposition:

"I. B. Burdick has taught in a rural high school in Winston County, Alabama, for a period of 25 months and three weeks during the

school years 1932 through 1935. The average rural high school year for the State for this period is 7 months and sixteen days. The average rural high school year for Winston County for this period is 7 months and 4 days.

"Does he have sufficient teaching experience to qualify him to become a candidate for election for County Superintendent of Education in Winston County, Alabama, under Section 139 of the School Code of 1927?"

It is my opinion that your question should be answered in the affirmative.

I call your attention to parts of Act No. 511, H. B. 546, approved September 6, 1927, (General Acts 1927, p. 606) which are as follows:

"Section 1. That no person shall be eligible for appointment by any county board of education or for political party nomination or for election to the office of county superintendent of education of any county who does not as now required hold an Alabama certificate in administration and supervision based as a minimum upon graduation from a standard normal school or equivalent education with at least one year of additional study of college grade and **proof of three years of successful teaching experience during the five years next preceding his appointment or election**; provided that a person so appointed by the county board of education need not be a resident or qualified elector of the county in which he is to serve; and provided further that the academic and professional qualifications prescribed herein shall not apply to county superintendents of education in office at the time of the passage of this Act."

Section 1½. **Provided that the provisions of this bill shall not apply to counties of this State which now have or may hereafter adopt a local bill providing for the election of a County Superintendent of Education for their respective counties."**

The Legislature has inherent power to prescribe qualifications for holding of State offices of trust.—**State ex rel. Moore v. Blake,** 142 So. 418, 225 Ala. 124.

A county superintendent of education holds office under the authority of the State.—**Biennial Report of Attorney General 1928-1930, p. 525.**

It is my opinion from studying the Act, supra, that the Legislature in prescribing "three years of successful teaching experience during the five years next preceding his appointment or election," meant three school years or terms and not three calendar years and that, although the school term or year is not uniform in Alabama, that the test as to what constitutes a school year or term should be the average length of the school year or term in the particular county.

"The intention of the Legislature, embodied in a statute, is the law, the fundamental rule of construction, to which all other rules are subordinate, is that the court, shall by all aids available, ascertain and give effect, unless it is in conflict with constitutional provision or is inconsistent with the organic law of the State, to the intention or purpose of the legislature as expressed in the statute."—59 Corpus Juris, 948.

Street v. Coe, 207 Ala. 93 So. 591; Sunflower Lumber Company v. Turner Supply Company, 158 Ala. 191, 48 So. 510.

In the case of Brookfield v. Drury College. 123 South Western, p. 86, the Court of Appeals of Missouri said: "The word year when used by educators and teachers has a special meaning, and refers to a college year and not a calendar year."

In the case of Williams v. Bangnette, 72 Pacific, p. 408, the Supreme Court of California held that where a school teacher was employed for a year, that year meant the school year and not the calendar year.

You state in your letter that the average rural high school year in Alabama during the school years 1932 through 1935, was seven months and sixteen days, and that the average rural high school year for Winston County for that period was seven months and four days.

From the facts as stated in your letter, it is my opinion that Mr. Burdick has taught three school years or terms, measured by the average length of the term in Winston County, or measured by the average term for the State and that he has had sufficient teaching experience to qualify as a candidate for County Superintendent of Education for Winston County.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936.

Hon. Eugene H. Hawkins,
Judge of Probate,
Jefferson County,
Birmingham, Alabama.

Fees—Probate Judge.

1. Probate Judge not required to attest satisfaction of mortgages, etc., except as provided by Section 9023 of the Code.

2. Where Probate Judge attests such satisfaction under Section 9023 of the Code, he is entitled to a fee of twenty-five cents.

3. In other cases, where he attests the satisfaction of mortgages, etc., at the request of the parties interested, he is entitled to a fee of twenty-five cents as provided by Section 7285 of the Code.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Under date of November 28, 1935, you wrote me as follows:

"Please advise whether or not the Probate Judge must attest the satisfaction of a mortgage by an attorney-in-fact, and whether or not the 25 cent fee should be collected, if such attest is required.

"I was under the impression that the Legislature had abolished the 25 cent fee entirely, but I have not found such an Act of the Legislature in the pamphlets which have been furnished me."

Under date of December 5th, I answered your inquiry by calling your attention to an opinion appearing in Biennial Report 1928-1930, page 355. Subsequent to that, Mr. Henry R. Howze wrote me presumably at your request, insisting that the opinion was laid in error and calling my attention

to the case of Blalock v. Windham, 157 So. p. 486, in which the Supreme Court, in discussing Section 9023 of the Code of 1923, said:

> "It is urged however, that the satisfaction in question is no protection to the Guaranty Company because not acknowledged or attested according to the formalities required by Section 9023 of the Code of Alabama, 1923. It is sufficient to say that the requirements there provided apply only to satisfactions in response to the demand made and not the voluntary entry of the satisfaction of the mortgage.—Burns v. Burns, 228 Ala. 61; Sullivan v. Williams, 210 Ala. 363, 98 So. 186."

Section 9023 provides in short that the mortgagee, etc., of a mortgage which has been paid "must on request in writing of the mortgagor," enter satisfaction on the margin of the record and that the same must be witnessed by the Judge of Probate or his clerk, and for making this attestation, the Probate Judge is entitled to a fee of twenty five cents. This is the section construed in the case cited and quoted from above.

It would appear from the foregoing case that there is no absolute requirement for the Probate Judge to witness the satisfaction of a mortgage except in those cases provided by Section 9023.

Section 9023, in addition to that referred to above states: "or satisfaction may be made by an attorney-in-fact authorized by an instrument executed and acknowleged as is required of conveyances and filed for record.

Section 7285, providing the scale of fees for Probate Judges, says: "for entering satisfaction of a mortgage 25c." This was the section referred to in the former opinion.

I take it, however, that this proviso of Section 7285 must be read along with Section 9023, as construed by the Supreme Court and therefore am of the opinion that the Probate Judge is not required to witness the satisfaction of a mortgage by the mortgagee or by his duly authorized attorney-in-fact, whose power of attorney has been filed for record, unless such satisfaction is entered pursuant to a demand made in writing by the mortgagor, as provided by Section 9023. If such satisfaction is made, pursuant to such demand, and witnessed by the Probate Judge, then he is entitled to a fee of twenty-five cents for attesting satisfaction. However, Section 7285 is unlimited in its scope, and if the Probate Judge, at the request of the parties, attests the satisfaction of a mortgage, he would be entitled to his fee of twenty-five cents.

Under the holding of the Supreme Court, however, there is no requirement of law that the satisfaction of a mortgage be so attested except in cases such as are provided for by Section 9023.

If the opinion appearing in the Biennial Report, 1928-1930, p. 355, is contrary to this, the same is hereby overruled so far as opposed to the holding herein made.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936.

Hon. W. W. Hill,
Superintendent, City Schools,
Fort Payne, Alabama.

City Board of Education not authorized to pay salary to City Treasurer for handling School Funds.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I am in receipt of your letter of January 20, 1936, requesting my opinion as follows:

"Will you please give me a ruling on the following question: Can the Fort Payne City Board of Education pay the City Treasurer a small salary for the handling of school funds? The Act relating to this matter is, Act No. 160, approved July, 1935."

I am of the opinion that the Fort Payne City Board of Education has no authority to pay a salary to the City Treasurer for handling school funds. The Act approved July 17, 1935 (page 202, Acts of Legislature, 1935), amending the School Code, makes no provision for any salary. I know of no other statute providing salary for this position.

The general rule is:

" * * * if a person accepts a public office for which no salary or compensation is fixed by law, any services rendered by him are gratuitous and no recovery can be had therefor."

43 C. J. 684, Par. 1138.

It is interesting to note that this Department has ruled in an opinion to Hon. R. E. Moore, Superintendent of Education of Cullman County, under date of March 30, 1931, that as the County Treasurer of School Funds receives no salary and as no provision is made for payment of his expenses, that he must bear any expenses incidental to his office himself.

That it is the policy of the Legislature not to pay for services rendered as Treasurer of School Funds is indicated by the fact that no salary is provided for the County Treasurer of School Funds.

I am, therefore, of the opinion that the City Board would not be authorized to pay the City Treasurer for handling school funds.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936.

Hon. Roy Sanderson,
Judge of Probate, Marion County,
Hamilton, Alabama.

Contract extending beyond term of office of Commissioner valid if made in good faith.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of March 21, 1936, requesting my opinion as follows:

"I shall appreciate your advising me on the following question:

"Suppose that Mr. A. is a Commissioner from District No. 7 in a county and is not seeking reelection, and his term of office expires within some nine months. Mr. A. desires to purchase a large quantity of equipment for road work in his District, and such equipment is to be used during his term as well as during the term of his successor, but, it is not possible for Mr. A. to pay for this equipment during his term of office. Since it is impossible for the Commissioner to pay the full price of the equipment while he continues in office, could he legally make such purchases and therefore bind his successor in office; for the payment of the balance due on such articles at the beginning of the new term?"

The general rule in reference to purchases properly made by members of a Board of Revenue or other authorized officers where payment or part of the payment will not be made until after the expiration of the term of the person making the purchase has expired, is that if a purchase is made in good faith, it is binding; otherwise not. 15 C. J. 541, Par. 234.

This rule is well expressed in the case of Jessup v. Hinchman, 133 N. E. 853, 77 Ind. App. 460, as follows:

"As a general rule, contracts extending beyond the term of office of members of a Board of County Commissioners are valid if made in good faith."

In the case of Board of Revenue of Shelby County vs. Farson, Son & Co., 72 So. 613, 197 Ala. 375 (1916), the court held that a resolution of the County Commissioners to build a court house and issue warrants constituted a valid contract binding on the Board of Revenue created to replace the Board of Commissioners.

The answer to your particular question therefore depends upon the facts in the instant case. If Mr. A. made purchase in which he was authorized to make and made same in good faith, I am of the opinion that his successor in office would be bound for the payment of the equipment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936.

Hon. A. G. Teague, Clerk,
Circuit Court of St. Clair County,
Ashville, Alabama.

For violation of Section 5 of Act of Alabama approved Oct. 28, 1932, known as "The Alabama Motor Carrier Act of 1932," the solicitor's fee is $10.00.

Opinion by Assistant Attorney General Haynes

Dear Sir:

I have your letter of April 1, 1936, in which you request my opinion as follows:

"Kindly advise what the Solicitor's fee would be in a case where the defendant is charged with Operating a Motor Vehicle for hire without having an Alabama Carrier Permit, (Section 5 Acts of Alabama, approved October 28th, 1932)?"

The violation of the above section is not a violation of the Revenue law of the State, but this law is a regulatory measure, therefore, the Solicitor's fee in cases of this character would be governed by Section 3738, Code of Alabama, 1923, where it says:

"For conviction of a misdemeanor not otherwise provided for, $10.00."

I do not find where there is any other provision of law covering this matter, therefore the solicitor's fee is $10.00.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936

Hon. O. S. Nichols,
Tax Assessor, Perry County,
Marion, Alabama.

Revenue Bill 1935, Section 47, construed.—Notice to taxpayers unnecessary where Board of Review merely returns assessment to basis of previous year without actually raising same.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 12, 1936, in which you request my opinion as follows:

"Will you please give your opinion at the very earliest convenience on the following:

"(1) If a Tax payer makes his assessment in October 1935 for the 1936 assessment and makes his, the tax payers value of his property say $4000, for 1936, which was assessed for $5000, for 1935, making a reduction of $1000, according to his assessment.

"(2) When the Board of Review meets the second Monday in March to review, revise and adjust all assessments turned over by the Tax Assessor, is it necessary for the Secretary of the Board to notify the above Tax payer in case the Board has raised his 1936 assessment back to the same as the 1935 assessment. If I understand the law, you are required to notify only when the Board has raised the value over the preceding year, and not required to notify in case the Taxpayer made his assessment for less than the preceding year and the Board only raised his value back to the same as the preceding year.

"Please answer at an early date as we will have to begin mailing out such notices if necessary which will cost 21c each to register and have return receipt of same. My understanding is that the secretary must notify only those that have been raised over the preceding year value, and not where the Board has raised his assessment from the reduced value back to same as previous year."

I call your attention to Section 47 of the Revenue Bill of 1935, which provides in part as follows:

"Section 47. The Assessor shall, from information entered on the tax return list and from all other information known to him, or which he may procure, proceed to ascertain what, in his best judgment, is a fair and reasonable market value of each item of property, returned by or listed to any taxpayer; provided, however, that the assessed value of any real estate or improvements as fixed for taxation for the year next preceding the then current tax year shall be prima facie the basis of the value of such property for assessment for the current tax year and such property shall not be assessed for taxation at a less valuation unless upon evidence submitted to the Board of Review, as provided for herein, it is found that the assessed valuation of the property reviewed should be reduced; and the Assessor shall in separate columns, enter on such list such amount and value, and deduction for exemption to which such taxpayer is entitled; and the Tax Assessor shall also add to such list any item of property subject to taxation, owned by such taxpayer, or in which he has any interest whatever and which he had failed or omitted to place on such list; and the taxpayer shall be given notice by the Assessor, by registered mail, return receipt demanded, or in person, of the items of property added to his assessment list after such list has been filed and before the Tax Assessor has completed his assessment; and the Assessor shall upon demand, furnish the taxpayer with a certified copy of his assessment list so amended. In the event the value of real or personal property of any taxpayer is increased by the Board of Review, herein created, over the assessed value thereof, for the next preceding year, the taxpayer shall be furnished by registered mail, return receipt demanded, on in person, by the Secretary of the Board of Review, with a statement showing separately the value of his personal property, and his real property, and improvements thereon, such statement to be signed by the Chairman of the Board of Review, and also that such taxpayer may file in writing, with the Secretary of the Board of Review, on or before the last Monday in April, objections to any assessed valuation fixed as herein provided. But failure to give or receive the notices required in this Section shall not invalidate such assessment."

This Section is clear in its mandate that where the Tax Assessor has added to the tax return list any item which the taxpayer has failed or omitted to place on such list, or where the value of the taxpayer's real or personal property is increased by the Board of Review, the taxpayer is entitled to be given notice by the Tax Assessor. These are the only two instances in which there is a provision for notice. In accordance with the maxim "expressio unius est exclusio alterius" where a provision prescribes certain conditions, compliance with which are necessary, no other conditions need be fulfilled; so there need be notice given only in those instances specifically mentioned in Section 47, supra.

Accordingly, the Board of Review need not serve the taxpayer with notice of the fact that the Board has raised his 1936 assessment back to the

same level as the 1935 assessment. However, the general notice provided by Section 74, should be published.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 9, 1936.

Hon. R. E. Adams,
Judge of Probate,
Escambia County,
Brewton, Alabama.

Taxi license obtained under Schedule 158.3 subsection (c) of 1935 Revenue Act, restricts operation of vehicle to city or incorporated town or within the police jurisdiction of licensee.

Operator of taxi, who serves the public at large and operates between no fixed termini, both within and without police jurisdiction of city, is required to qualify as a common carrier under Act No. 159, H. B. 113, approved October 28, 1932, (General Acts 1932, p. 178) known as the Tidwell Law.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 18, 1936, in which you state:

"Please let me have your official opinion on the following questions:

"1. Are the operations of the owner of a taxi or motor car, using an X-1 license tag purchased under Schedule 158.3, subsection (c), confined to the police jurisdiction of the city or town of his address?

"2. Is such operator required to qualify under the Tidwell Bill, page 178 of the Acts of the Legislature of 1932, as a 'Contract Carrier,' when his vehicle may be hired by the public at large and he operates between no fixed termini, and both within and without the police jurisdiction of municipalities?"

It is my opinion that your first question should be answered in the affirmative.

The license levied under Schedule 158.3 of the 1935 Revenue Act for each motor vehicle operated as part of a taxicab, or similar system is for the operation of said vehicle in a city, town or municipality, which also includes the police jurisdiction of said city, town or municipality. Subsection (e) of Schedule 158.3, provides in part as follows:

"* * * Provided, that no city, town or municipality shall levy or collect a license tax on any vehicle hereinabove set out of more than one-half (½) of the amount levied or collected as set out."

I call your attention to the fact that motor vehicles for hire, while operating within the limits of a city or incorporated town, or within the police jurisdiction thereof, are expressly exempted from the operation of Act No. 159, H. B. 113, approved October 28, 1932, (General Acts 1932, p. 178), by a part of Section 2 of said Act which is as follows:

" * * * 2. Motor vehicles for hire, while operating within the limits of a city or incorporated town, or within the police jurisdiction thereof, or between two cities or incorporated towns whose city limits adjoin or within the police jurisdiction thereof."

Answering your second question, it is my opinion that such operator is required to qualify as a common carrier under Act No. 159, H. B. 113, approved October 28, 1932, (General Acts 1932, p. 178).

The facts as stated in your second question are similar to the facts in the case of Hood v. State, 162 So. 543, 230 Ala. 343, in which case the Supreme Court of Alabama held that the operator of the vehicle was not a contract carrier, but was a common carrier as defined by the Tidwell Law. The Act defines a common carrier as:

"Any operator of a motor vehicle who engages in the motor transportation business for hire as a public employment, provided, however, neither the term 'common carrier,' nor any other provision of this Act, shall be construed to mean or include any motor transportation company or common carrier subject to the provisions of the Alabama Motor Carrier Act of 1931."

For your information, I wish to call your attention to the following opinions of this office:

Quarterly Report of the Attorney General, Vol. 1, pp. 111 and 296;
Biennial Report of the Attorney General, 1932-1934, pp. 590 and 75.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936.

Hon. Chas. W. Lee,
State Comptroller,
CAPITOL.

State Forestry Commission:

(1) Officers and employees of the State Forestry Commission not authorized to receive any salary or compensation from state funds in excess of that set out in the Lapsley-Lusk Salary Act of 1933 (Acts 1933, page 124).

(2) Payment of portions of salaries of officers and employees of Forestry Commission from so-called Federal Funds in hands of said Commission in excess of the percentage provided for by Federal Law and regulations, as such salaries of such officers and employees are fixed by the Lapsley-Lusk Act, held illegal.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of inquiry in regard to salaries of the officers and employees of the State Forestry Commission in which you state:

"I contend that Section '1' of the Lapsley-Lusk Salary Act of 1933 establishes the lawful salaries of the State Forester and employees in-

volved, and no higher salary should have been received by those involved than set forth in Section '1' of the Act."

You ask my opinion as to the correctness of your contention. In reply, I wish to advise that in my opinion your contention is a correct construction of the Lapsley-Lusk Salary Act of 1933 (General Acts 1933, p. 124). Section 1 of this Act provides, in part, as follows:

"Section 1. That the annual salaries of the officers and employees of the State of Alabama hereinafter named shall be the amounts hereinafter set opposite the respective offices, positions and employments, and shall be payable in equal monthly installments, viz: * * * THE SALARIES OF THE OFFICERS AND EMPLOYEES OF THE STATE COMMISSION OF FORESTRY SHALL BE AS FOLLOWS: State Forester $4,125.00, General Inspector and Chief of Bureau of Field Service $2,400.00, Division Forester and Technical Assistant $2,100.00, Division Forester $1,200.00, Chief Clerk and Accountant $2,400.00, Executive Assistant in Field Service $1,500.00, Executive Assistant in Public Relations $1,500.00. Land Clerk $1,800.00. No other employee of said Department or Commission shall be paid more than $100.00 per month from State Funds. Any portion of the salaries of said officers or employees which may be paid by the United States shall be deducted from the above specified amounts."

You will note that the above quoted parts of this Act very definitely limit the salaries or compensation of the officers and employees of the State Forestry Commission to certain specified amounts. The limitations upon these salaries clearly show the legislative intent, that no amount in excess of the provisions of Section 1 shall be paid. The clause, "Any portion of the salaries of said officers or employees which may be paid by the United States to be deducted from the above specified amounts," precludes the possibility of increasing salaries therein provided for with Federal Funds.

You say that the State Forester is of the opinion that Section 7 of the Act provides such exception as to permit payment of increased salaries by the Forestry Commission from Federal funds. Section 7 provides as follows:

"Section 7. Provided, however, nothing in this Act shall be construed to prohibit or restrict any officer or employe from receiving an additional salary or compensation from funds derived from the United States or any philanthropic source, except as otherwise specifically provided in this Act."

The last clause of this Section, "except as otherwise specifically provided in this Act," limits the salaries or compensation to the provisions of the Act and, therefore subjects such salaries or compensation payable from the State funds to the limitations of Section 1, which definitely fixes the salaries or compensation at specified amounts. Section 1 further provides that any amount received from Federal Funds shall be deducted from the specified amounts set by the Act as salary to be paid by the State. It is, therefore, my opinion that no amounts in excess of the salaries or compensation set out in Section 1 of this Act can be legally paid to the State Forester or any employee of the Forestry Commission from State funds, either in whole or in part.

You have appended to your request a letter from Mr. H. J. Eberly, United State Reginal Forest Inspector, which is as follows:

"In accordance with your request yesterday, I am enclosing list showing, one, names of private forest owning companies and individuals listed on the Alabama Section 2 cooperative fire protection budget for the fiscal years 1932 to 1934 inclusive, and two, the percentage of salaries of Alabama Forestry Commission employees considered as proper to include in the Commission's statement to the Forest Service for Federal reimbursement.

"As explained to you yetserday, the Alabama cooperative fire protection plan in cooperation with the private forest land owners and the State includes two methods, one of which consists of cash payments direct to the Commission for fire protection, and the other method is where the company itself employs men for fire protection.

"Salary and expense percentage chargeable to fire protection and planting proper for Federal reimbursement.

"Section 2 Fire Protection		Section 4 Planting
1 State Forester	70%	
1 Chief Clerk	80%	1 Clerk 1/12 or 8-1/3%
2 Executive Assistants	80%	
2 Clerks	80%	1 Inspector 1/24 or approx. 4.17%
2 Inspectors	90%	
1 Inspector	70%	1 Inspector 1/24 or approx. 4.17%
45 Agents	95%	

"Cooperative Budget for Fiscal year July 1, 1932 to June 30, 1933. Names of Private Cooperators in Fire protection same as above for previous fiscal year.

"Salary and expense percentages properly chargeable for Federal reimbursement.

"Section 2 Fire Protection		Section 4 Planting
1 State Forester	70%	2%
1 Chief Clerk	70%	
1 Executive Assistant	90%	2%
1 Executive Assistant	70%	
1 Clerk	70%	5%
1 Clerk	90%	
1 Inspector (Cleveland)	100%	
2 Inspectors each (Stauffer & Schaeffer)	90%	2%
1 Inspector (Hampe)	95%	
22 Agents	95%	1 Nurseryman 75%

"**Note:** Other Towermen, agents, etc., 100% on fire protection not listed above.

"Salary and expense reimbursement percentages for Section 2 fire protection activities. Same as for preceding fiscal year except that the number of agents was 25 but the reimbursement percentage remained unchanged. Percentage chargeable to Section 4 (Planting) as follows:

"1 State Forester 2%
1 Executive Assistant 2%
1 Clerk 3%
1 Nurseryman ..... 88%"

It must be kept in mind that, according to the above letter of Mr. Eberly, the plan, under U.S.C.A. Section 464 et seq., and existing regulations, for co-operative fire protection in Alabama with private forest land owners in the State includes two methods, namely; (1) Cash payments direct to the Commission (The Alabama Forestry Commission) for fire protection, and (2) The private forest land owners employ men for fire protection.

It must also be kept in mind that under the above quoted letter of Mr. Eberly, the approved Federal Budget (for so-called reimbursement) contemplated during the fiscal years under consideration only the percentages shown in said letter of Mr. Eberly.

Of course, the Federal Government had nothing whatsoever to do with the fixing of the salaries of the officers and employees of the Forestry Commission. The salaries of those specifically named in the Lapsley-Lusk Act, quoted supra, were for the amounts therein fixed; and for all other employees of the said Commission, the maximum salary fixed by said Act, ($100.00) was in force, save only as to those working with the Forestry Commission who were paid their entire salary from Federal Funds as per the above quoted letter. The Federal Funds allocated to the Commission, and the so-called private funds paid by land owners in lieu of actually furnishing men for fire protection work, should not have been expended for salaries of officers and employees of the Commission to a greater extent than the percentages shown in the above quoted letter.

Under Section 565 of 16 U.S.C.A. as amended April 13, 1926, **of the so-called Clarke-McNary Act** it was provided: "That expenditures of forest owners or operators which are required by the State law or which are made in pursuance of the forest protection system of the State under State supervision" in all cases must be satisfactorily accounted for by the State.

In my opinion, all of said so-called Federal Funds which have been expended for salaries of officers and employees of the State Forestry Commission in amounts in excess of the specific percentages set forth in the letter of Mr. Eberly, supra, have been illegally expended; and their application by the Commission to the salaries of its officers and employees in excess of the said stated percentages prevent the State from "satisfactorily accounting for the same" as was provided by Federal law.

In my opinion, the officers and employees of the Commission who took or accepted from said so-called Federal Funds an amount in excess of these stated percentages, (as per the above letter,) of the compensation as fixed by the State Statute (The Lapsley-Lusk Act) are accountable for and liable for the same, and that the same should be recovered from said officers and employees and returned to the State Forestry Fund, or the Federal supplement thereto, to be used for the purposes authorized by law.

This opinion extends and amplifies the former opinion of this office dated September 14, 1935, addressed to you, as State Comptroller; and, to the extent that the said former opinion is in conflict with this opinion, the same is withdrawn and overruled.

Yours véry truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936.

Hon. Sidney J. Gray,
Mobile County Board of Registrars,
Mobile, Alabama.

Registration—Person of foreign birth who has taken out first papers not entitled to register.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of January 20, 1936, in which you request my opinion as follows:

"We have an application for registration from a person of foreign birth who has taken out his first naturalization papers but has not obtained his final papers. Please let us have your opinion as to whether or not he is entitled to registration."

I am of the opinion that a foreigner who has merely declared his intention to become a citizen is not entitled to register. This was decided in the case of Gardina v. Board of Registrars, 160 Ala. 155, 48 So. 788.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Witnesses—Sheriffs and deputy sheriffs who are summoned as witnesses to attend any criminal court of this State are entitled to their per diem and mileage regardless of whether they be on a salary or fees.

Section 28 of an Act establishing Inferior Courts (Gen. Acts 1931, page 11) prohibits the clerk from issuing execution on any judgment in said court less than five days after the rendering of such judgment, but it was the legislative intent that execution issue as soon after five days as may be practicable.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of February 20, 1936, in which you request my opinion as follows:

"In the Court of Common Pleas of Montgomery County, Alabama, the Sheriff, Deputies and State Law Enforcement Officers appeared as witnesses in Criminal cases and received the usual witness fee.

"1. Should not this fee be paid into the County or State Treasury, as the case may be, since these officers are on a salary?

"2. In the same Court the law pertaining to executions for costs requires the Clerk to issue executions after the lapse of five days. Should the Clerk issue executions in all cases whether it seems possible to col-

lect the cost or not? Is there any limit as to the amount of time he may take in the issuing of said executions? Should the said executions be issued six days after a judgment has been rendered?"

I am of the opinion the sheriff, deputies sheriff and other State Law Enforcement Officers are entitled to their per diem and mileage when attending court as a witness for the State in any criminal prosecution. This is an individual matter and not an official duty and unless there is a law to the contrary, they do not have to pay it into the county treasury when so collected. Officers when attending court as witnesses in criminal cases are not performing an official duty, in other words, these are duties performed that are not required of them officially. Therefore, when they are summoned to attend court as a witness in criminal cases they are performing an individual service whether they be on a salary or fees. Biennial Report of Attorney General, 1930-32, page 179. Biennial Report of Attorney General, 1920-22, page 449. Biennial Report of Attorney General, 1928-30, page 532.

Answering your second inquiry, I call your attention to Section 28 of an Act approved February 5, 1931, (Gen. Acts 1931, page 11) which Act establishes the Inferior Courts of Alabama and is as follows:

> "Section 28. That it shall be the duty of the clerk of such court after the lapse of five days from the rendition of judgment therein, if an appeal is not taken, unless otherwise directed by the court, to issue executions on all judgments in favor of the successful parties, which must be signed by him, dated on the day it was issued, and made returnable not less than twenty nor more than sixty days from date of its issue, and he shall place the same in the hands of the sheriff; alias writs shall be made returnable in like manner."

You will note from the above that it becomes the duty of the clerk of such court after an elapse of five days from the rendition of judgment therein, if an appeal is not taken, unless otherwise directed by the court, to issue execution on all judgments in favor of the successful parties. It is clear from the above that the clerk cannot issue the execution until the elapse of five days from the rendition of the judgment and I think it is the clear legislative intent that he must issue same after five days and place the same in the hands of the sheriff and this is not a matter that is left to the private opinion of the clerk as to whether or not the judgment can be realized out of the party against whom the judgment is rendered. He must issue the execution for the reason the collectibility of the judgment cannot legally be ascertained until or unless the sheriff is legally armed with an execution and makes at least an attempt to collect same.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936.

Hon. M. F. Elrod, Chairman,
Marshall County Board of Revenue,
Guntersville, Alabama.

Court of County Commissioners—Not authorized to expend constitutional road and bridge fund nor county gasoline excise tax fund to pay toll bridge operator annual sum in lieu of toll for residents of the county.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"I am sending you a copy of a resolution recently adopted by the Marshall County Board of Revenue, with reference to free passage over the George S. Houston Bridge located here at Guntersville, and shall be very glad indeed to have your ruling on what fund to pay same from provided we get this in force.

"1. Can it be paid from Road and Bridge Fund,

"2. Can it be paid from the Gasoline Fund?"

It appears from the copy of the contract attached to your request that the County has acted under that part of Acts 1927, p. 278, which provides:

"The (Alabama State Bridge) Corporation is hereby given authority to contract with the Board of Revenue, Court of County Commissioners or like governing body of any county in which a bridge may be constructed, under the provisions of this Act, for said county to pay annually a sum of money to be agreed upon by the corporation and the said county authority; said sum of money to be in lieu of all toll for residents of said county * * * * ."

Your first inquiry must be answered in the negative. In my opinion, the annual payment in lieu of toll cannot be made from the road and bridge fund provided for by the Constitution. Section 215 of the Constitution provides in part as follows:

"* * * provided, further, that to pay any debt or liability now existing against any county, incurred for the erection, construction or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings or bridges, or roads, (a) any county may levy and collect such special taxes, not to exceed one fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

The above quoted constitutional provision is restricted and authorizes the expenditure of money collected from levy of such taxes only on **public county** roads and bridges.

Montgomery County v. City of Montgomery, 190 Ala. 366.

The payment to a toll bridge operator of a sum in lieu of toll for residents of the county, does not come within its purview.

Your second inquiry must also be answered in the negative. Schedule 156.9 of Article XIII, Chapter 4, Acts 1935, p. 256, provides in part:

"One-third of the proceeds of the excise tax herein imposed, less cost of collection and administering this Chapter, shall be paid into the State Treasury to the credit of the sixty-seven counties of this State, and shall be divided and distributed equally among the 67 counties of this State, payment to be made by state warrant to be mailed to the Treasurer of such counties or depositories of such counties, on or before the 10th day

of each month following collection. Such funds when received by the County Treasurer shall be covered into the County road and bridge fund, and shall be expended exclusively in the construction, maintenance and repair of the public roads and bridges in such County. The use or expenditure of any said funds in any manner or for any other purpose than as provided herein, **but** (by) the governing body of any County or any individual member of said body, shall constitute a misdemeanor punishable by a fine of not less than One Hundred Dollars ($100.00), nor more than One Thousand Dollars ($1,000.00), and by imprisonment in the County jail or at hard labor for the county for not less than one nor more than twelve months."

From the language employed in this statute, it is manifest that the Legislature intended that County governing bodies should expend the county's share of the gasoline excise tax only for the purposes named therein. An annual payment in lieu of toll for residents of a county is not, in my opinion, such a purpose as the statute, supra, contemplates. The payment, if made, should be from the general funds of the county.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936.

Hon. H. W. Nixon,
State Toxicologist,
Auburn, Alabama.

State Toxicologist has no authority to exhume a body except when ordered to do so by the Governor, the Attorney General, any Circuit Judge or Circuit Solicitor, or the Commissioner of Agriculture.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of recent date, in which you inquire:

"Have I the authority, by virtue of the law creating the State Toxicologist, to exhume a body if, in my opinion, that is necessary to secure medico-legal evidence for the State of Alabama."

I have carefully read and examined Act No. 225, House Bill No. 425, approved July 17, 1935, the Act creating the office of State Toxicologist, and it is my opinion that the State Toxicologist does not have authority to exhume a body, except when he is ordered to do so by the Governor, the Attorney General, any Circuit Judge, or Circuit Solicitor, or the Commissioner of Agriculture.

In my opinion, under the Act, supra, the order to make a toxicologist examination or chemical analysis of any dead human body or any dead domestic animal body carries with it by implication the right to exhume the body as it would be impossible to make a proper examination or chemical analysis without exhumation. I am of the opinion that the Commissioner of Agriculture is only authorized to order the examination or analysis of the body of a dead domestic animal.

I call your attention to the following authorities, which hold that the exhumation of dead bodies for the purpose of supplying evidence is a matter largely within the discretion of the Court.—**30 Corpus Juris**, p. 320; **Moss v. State**, 152 Ala. 30, 44 So. 598.

For your information, I enclose a copy of an opinion of this office to Hon. John E. McEachin, Solicitor 23rd Judicial Circuit, Huntsville, Alabama, dated September 14, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 10, 1936.

Hon. E. C. Whelan,
License Inspector,
Jefferson County,
Birmingham, Alabama.

Contractors accepting contracts without having first obtained license prescribed by Schedule 42 General Acts 1935, p. 455 held liable for fifteen per cent (15%) penalty and six per cent (6%) interest imposed by Section 353 General Acts 1935, p. 559.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 28, 1936 in which you request my opinion as follows:

"I wish your opinion with reference to Schedule 42, page 455 1935 General Acts of Alabama. Would a contractor be liable for the 15 per cent penalty and 6 per cent interest, if he accepts a contract to engage in such work as described in Schedule 42 before he obtains a license as required in said Schedule?

"I am asking your opinion at the request of Harbert-Carlisle Construction Company, who purchased a license and paid the 15 per cent penalty and 6 per cent interest to Eugene B. Henry, Commissioner of Licenses. Since paying the penalty and interest they request me to refund the 15 per cent penalty which was paid to me by Eugene B. Henry, Commissioner of Licenses, for the reason that they did not get a work order to begin the work until the day they purchased their additional license. If in your opinion they were not liable for the penalty and interest, can I refund the amount of the penalty paid me by Eugene B. Henry under your present ruling as to the fees of this office, or should they make application for refund under Section 366 and 367?

"I might state the facts in this case are that the contracts were let and accepted prior to the purchasing of the additional license, but they contend that there was a provision in the contract that they could not actually begin work on the job until they got a final work order."

In my opinion, the contractor mentioned in your inquiry would be liable for the fifteen per cent penalty and six per cent interest where he accepts the contract to engage in the work mentioned in Schedule 42, General Acts 1935, p. 455 before obtaining the license required by said schedule.

I quote from an opinion of the Attorney General to Hon. W. M. Vaughan, Judge of Probate, Dallas County, Selma, Alabama (Biennial Report of the Attorney General 1922-24, p. 177) wherein it was said in construing an identical section of the 1919 Revenue Act:

"Schedule 34 of Section 361 of the Revenue Act, 1919, is, in my opinion, predicated upon the acceptance of a contract or contracts and not upon the performance of the work contracted to be done. * * * Under Schedule 34 a license is required on acceptance only of the contract or contracts. The license, in our opinion, is on contracting and not on the performing of the work contracted to be done.

"The schedule begins with a definition of the word 'contract', which definition is as follows:

'Any person, firm or corporation accepting orders or contracts for doing any work * * * shall be deemed a contractor.'

"It seems clear, then, that it is the **accepting** of orders or contracts to do a kind of work mentioned in the schedule, and not the performing of the work contracted to be done, which determines the question as to who is a 'contractor' within the meaning of Schedule 34.

"After defining what constitutes a 'contractor' within the meaning of the schedule, said schedule then proceeds to levy the tax in the manner following:

" 'Every such contractor shall pay a license to be ascertained in the followni manner: If the gross amount of orders or contracts accepted aggregate five thousand dollars and not exceeding ten thousand dollars, he shall pay the sum of ten dollars; If * * * ; and when such contractor shall have obtained a license for any year for which he has paid a license tax less than the maximum above prescribed, he shall not **accept any contract or contracts during such year,the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license.'**

"A careful reading of the foregoing provisions of said Schedule 34 will, we think, reveal the fact that it was the legislative intent to levy the tax upon **accepting** certain kinds of contracts, and not upon the performance of the work contracted to be done."

The above statements are equally applicable to the present law, i. e., Schedule 42, which is a facsimile of the schedule under discussion in the opinion above quoted. It appearing from the facts detailed by you that the contract was in fact accepted before the license was taken out, the contractor mentioned in your inquiry is liable for the penalty imposed by Section 353 (General Acts 1935, p. 559) upon such delinquents.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 11, 1936.

Hon. A. G. Teague, Clerk,
Circuit Court of St. Clair County,
Pell City, Alabama.

Costs and fees—

Where defendant has been convicted and sentenced to the penitentiary and while motion is pending in the Circuit Court seeking to set aside the verdict, even though the defendant elects to begin his sentence, the costs should not be certified to the Convict Department for payment until the case is finally disposed of; and where it is so certified and paid by the State, and the motion to set aside the verdict of the jury is granted, the costs should be returned to the Convict Department by the Clerk.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 26, 1936, in which you request my opinion as follows:

"Whereas at the fall term of the Circuit Court at Pell City, Alabama, Wyoming Johnston was convicted and sentenced to a term in the State penitentiary, and was duly transferred as required, and was serving time, when due to a motion filed for a new trial for the defendant, and a new trial was granted the defendant, and said defendant was ordered released from the penitentiary.

"Later a check from the State for the cost of the said defendants trial was received by the clerk.

"Should the money be paid out to the proper persons having cost in the case, or should the entire amount be returned to the State Treasurer?"

It is my opinion you should return the money collected to the State as you cannot pay out this cost until the case is **finally disposed of.** As long as there was a motion pending before the Court asking that the verdict of the jury be set aside, or the case is pending in the Court of Appeals or the Supreme Court, this cost should not be certified to the Convict Department for payment, for the reason it cannot be ascertained whether the State is liable for the cost until there is final judgment in the case, and it cannot be considered final until there is a failure to appeal or the judgment affirmed by the higher court. It is true, Section 3667, Code of Alabama, 1923, says among other things:

"When a defendant is convicted and sentenced to the penitentiary the following items of costs in the case shall be paid out of Convict Fund, to the extent and in the manner hereafter provided."

But this could mean but one thing, and that is where the defendant is finally convicted and sent to the penitentiary, otherwise, the State would be continually paying costs in criminal cases where the defendant was acquitted. Cases often appear where the defendant was convicted on his first trial and the verdict set aside by the presiding judge on proper motion and the defendant on subsequent trial acquitted, and again, the defendant may, after conviction, appeal his case to the Supreme Court or Court of Appeals and there the case is reversed and the defendant later acquitted. Therefore, no

costs should be certified to the Convict Department for payment until the judgment has become final.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 11, 1936.

Hon. S. P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Counties—Temporary loans made under the provisions of Section 11 of Act No. 379, H. 191, approved September 9, 1935, (Acts 1935, page 803) known as the "County Financial Control Act" shall not exceed ninety-five per cent of such temporary loans made during preceding fiscal year except for emergencies as provided for in Section 17 of said Act.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 3, 1936, which is as follows:

"Please refer to Section 11 of the Financial Control Act and advise me as follows:

"This County borrowed $20,000.00 last year from the bank to meet current expenses and has been doing so for years. Same was paid in January. We are trying our best to get by this year without borrowing. If we can will we be prohibited from making a temporary loan next year to meet current expenses under the provisions of this section, since said section provides that loans of this kind can be made but should not exceed ninety-five per cent of such temporary loans made during the preceding fiscal year?"

Section 11 of Act No. 379, H. 191, approved September 9, 1935, (General Acts 1935, p. 803) known as the "County Financial Control Act", provides as follows:

"Section 11. TEMPORARY LOANS. Nothing in this Act shall be construed to repeal the general laws of the State of Alabama authorizing counties to make temporary loans in anticipation of collection of taxes; **provided, however, that hereafter no temporary loan or loans in anticipation of the collection of taxes made for the purpose of enabling counties to meet their current obligations shall exceed 95% of the amount of such temporary loans made during the preceding fiscal year, except that to meet emergencies provided for in Section 17 hereof, temporary loans in anticipation of collection of taxes may be made up to the full amount provided for under the general laws of the State of Alabama;** and in making up the budget provided for under this Act the amount borrowed on temporary loans in anticipation of the collection of taxes to be made during each fiscal year shall be included as a part of the operating revenue of the county for such year; and the amount of such temporary loan, principal and interest, payable in each fiscal year, shall constitute a part of the current operating expenses to be included in the budget of the county for the fiscal year in which such loans are payable, and shall be paid out of the funds pledged therefor." (Italics supplied).

It will be seen from the above that temporary loans made by a county under Section 11 shall not exceed ninety-five per cent of the amount of such loans made during the preceding fiscal year except for emergencies under Section 17 of the County Financial Control Act. In my opinion the provisions of Section 11 are mandatory and must be followed.

Your very truly,
A. A. CARMICHAEL.
Attorney General.

April 14, 1936.

Hon. Robert Moore,
Commissioner of Labor,
Department of Labor,
Capitol.

House Bill No. 913, approved September 11, 1935, page 911, Acts of 1935 held to be remedial statute.

Commisisoner of Labor held to be authorized to enter factories, plants, etc., for the purposes outlined in said House Bill No. 911, Acts of 1935.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of February 20th, 1936 requesting my opinion as follows:

"With reference to House Bill No. 913, approved September 11, 1935, and found on page 911, of the 1935 Acts, Section 2 provides in part as follows:

" 'It shall be the duty of the Department of Labor, under the direction of the Governor to administer all laws relating to hours of work, child labor, employer and employee, working conditions, and to promote voluntary arbitration, etc.'

"Also Section 7 provides in part as follows:

" 'It shall be the duty of the Commissioner of Labor to make a continuous study of labor conditions in Alabama, including living conditions, hours of work, wages paid, and all other facts that pertain to a study of labor in this State, including safety devices, safety guards, and means of protection against accidents, and means and methods of preventing industrial and occupational diseases, etc.'

"So far as I have been able to ascertain there is no law in Alabama, which would give the Department of Labor the right of entry in factories, plants, etc., other than the Child Labor Law, which, of course, only relates to child labor, for the purposes of making inspections necessary to determine facts regarding working conditions, safety devices, etc.

"Does not Section 2 and Section 7 of the Act, hereinabove referred to, vest the Department of Labor with the right of entry, under which right this Department would have authority to make inspections and investigations in factories, plants, etc., even against the wishes of the owners or operators of such plants for the purposes of making a study of labor conditions as set out in Section 2 and Section 7 of said Act?"

In reply, I wish to advise that in my opinion, the statutes here considered are remedial in their nature and must, therefore, be liberally construed. I refer you to the case of Railroad Commission of Alabama vs. Alabama Great Southern Railroad Company, 64 So., p. 13, in which the court said.

"A remedial statute is entitled to receive an enlightened and liberal construction."

See also 185 Ala. 354, L. R. A. 1915, D. 98 and Harrington vs. State 76 So. 422, 200 Ala. 480.

Since the said statute required that the "Commissioner of Labor make a continuous study of labor conditions in Alabama including living conditions, hours of work, wages paid, and all other facts that pertain to a study of labor in this State including safety devices, safety guards, and means of protection against accidents and means and methods of preventing industrial and occupational diseases, etc." and since the said statute is a remedial statute, a liberal construction of this statute is necessary to give effect to the mandate contained therein. The right of entry, it occurs to me, would be necessary in the study commanded to be made by the Commissioner of Labor in the said statute.

It is therefore my opinion that the legislature intended that the Commissioner of Labor be clothed with the necessary authority to carry out the mandate of the statute referred to in your request.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 15, 1936.

Hon. Chas. W. Lee,
State Comptroller,
CAPITOL.

County—

1. County Board of Revenue held to be without authority to make appropriations to American Legion Convention.

2. Montgomery County—County Board of Revenue held authorized under Acts 1931, page 61 to pay hospital expenses of employees injured in line and scope of duty.

3. Certain officers and employees of Montgomery County held unauthorized to receive extra compensation.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of January 21, 1936 in which you request my opinion as follows:

"Please give me your opinion on the following questions:

"(1) Has the Board of Revenue of Montgomery County the right under Section 6755, Sub-section 23 of the Code of 1923, to appropriate a sum of money to the American Legion Reunion?

"(2) Has the Board the right under Section 1201 of the 1923 Code to pay the Hospital bill of a County Employee injured in his line of duty?

"(3) Has the Board the right under Acts of 1919, page 306, Sections 67 and 68 to appropriate money for making Plat Book when made by a party who is a clerk in the Tax Assessor's office and the salary is paid by the county?

"(4) Has the Board the right under Acts of 1931, page 152, Section 1 or any other prior Act, to pay out of the (Eighteen Hundred Dollars for other expenses and Clerk hire) to any one regularly employed and paid by the County, extra compensation?

"Questions 2, 3 and 4 are based on the fact that all officials in Montgomery County except the Register in Chancery and Circuit Clerk are on a salary, and an amount is appropriated by the Act clerical assistance."

In reply I wish to advise that in my opinion your first question must be answered in the negative.

The County Board of Revenue is a creature of the statute possessing only those powers conferred upon it by the law. I find no authority of law conferring the power necessary to appropriate any sum for the purpose here named, however, worthy the same may be. Therefore, the conclusion above announced is inevitable. I wish to refer you to the following opinions of this office:

Biennial Report of Attorney General 1928-30, p. 809;
Biennial Report of Attorney General 1924-26, p. 350.

Your second question must be answered conditionally. Section 1201 of the Code of 1923 provides as follows:

"Section 1201. Appropriation for sick and wounded authorized.—The board of revenue or court of county commissioners of any county in this state having a population of over twenty-five thousand people may make appropriation out of their respective county treasury to aid in maintaining and taking care of sick and wounded persons who are unable to provide for themselves in any hospital maintained in their respective counties exclusively for the care of the sick and wounded."

In my opinion the hospital bill of the injured employee could not be paid under the authority of the above quoted section merely because the injured person was or is an employee of the county and was injured in the line and scope of his duty.

This section specifically provides that only those "who are unable to provide for themselves" may receive the benefits provided for in this section. A question of fact arises here and one upon which this office is not in position to rule. This is a question which addresses itself to the discretion of the Board of Revenue.

In this connection, however, I do not think that I should confine my answer to Section 1201 of the code referred to by you above, but in my judgment it is necessary that the Acts of 1931, page 61 be taken into consideration.

Section 1 of the Acts of 1931, page 61, supra, provides as follows:

"Section 1. That Boards of Revenue in counties in this State having a population of not less than 75,000 and not more than 100,000 according to the Federal Census of 1930, and which may hereafter have such population according to any Federal Census hereafter taken, are hereby authorized to appropriate out of any moneys in the county treasury not otherwise appropriated and to expend not exceeding the sum of $6,000.00 per annum for any county purposes not otherwise provided for by law that in their judgment are worthy and for the interest of the county, the fund hereby authorized to be created to be known as the 'Contingent Fund'."

You will note that this Section authorizes the Board of Revenue of Montgomery County "to appropriate out of any moneys of the County Treasury not otherwise appropriated and to expend not exceeding the sum of $6,000.00 per annum for any **County purposes not otherwise provided for by law that in their judgment are worthy and for the interest of the county."**

In my judgment, if the County Board of Revenue in their discretion deem it to be the best interest of the county and a worthy purpose under the authority of the above named Act of 1931, they may pay the hospital bill of the said county employee.

In reply to your third question, I wish to refer you to an opinion of the Attorney General under date of April 15, 1936, addressed to Hon. Cyrus B. Brown, Chairman of the Board of Revenue of Montgomery County.

In reply to your fourth question, I wish to advise that a conference with Mr. Ball, your examiner, and Mr. Heustess, Clerk of the Montgomery County Board of Revenue, reveals that the expenditures contemplated by this question were made as follows:

(1) To a janitor regularly employed by the county and given extra work in the office of the Judge of Probate which work was performed during the hours contemplated by his contract of employment with the county governing body. I understand that he was paid extra compensation from the "Contingent Fund" of the Probate Judge of Montgomery County.

(2) To a deputy sheriff whose salary is fixed by the law. I understand that he received extra compensation for extra duties performed at the direction of the Judge of Probate.

(3) To individuals not otherwise employed by the county.

In my judgment, in the case of the janitor, the compensation cannot be paid. As I understand the contract of the employment of this man, it was for full time services at a set salary.

Under these circumstances, I cannot see that the janitor has the right to enter into a contract for extra compensation therefor for work to be performed at and during the hours contemplated by this contract of employment with the county governing body, and without their consent. While his salary is not set by statute, his contract of employment is for full time services at a specified sum. In my judgment ,any changes in such contract must be with the approval of the county governing body. He cannot serve two masters at one time.

A deputy sheriff, in my judgment, cannot receive any additional compensation for services rendered to the county. While more than one reason for this statement may be advanced, it is my belief that one will prove sufficient.

The limitations of the law setting the salary for the Montgomery County officers definitely provides that said salaries must be received by the said officers in lieu of all other fees, compensations or emoluments of office. The question arises as to whether or not the deputy sheriff is a public officer in Montgomery County. This question is very definitely answered by the Supreme Court of Alabama which held that a deputy sheriff who is paid from public funds is a county officer and naming Montgomery County as an illustration. See Ward vs. State, 203 Ala. 306. A county officer is prohibited by statute from contracting with the county for extra compensation. See Code of Alabama of 1923, Section 5024.

In my judgment, no question as to legality of payment of services rendered by individuals employed as extra help and who are not otherwise connected with the county can or does arise. The law provides for a fund to pay for extra help of the officers of Montgomery County. See Acts of 1931, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 15, 1936.

Hon. Cyrus B. Brown,
Chairman, Board of Revenue,
Montgomery County,
Montgomery, Alabama.

1. Board of Revenue of Montgomery County is authorized to enter into contract with employee of Tax Assessor's office for preparation of Plat Book as required by Section 172 of the Revenue Code of 1929, and to pay a reasonable compensation therefor.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 2, 1936, in which you request my opinion as follows:

"Please give me your opinion on the following question:

"The Board of Revenue of Montgomery County entered into a contract with a party who is regularly employed as Clerk in the office of the Tax Assessor of Montgomery County, and who is from past experience and training peculiarly qualified to make the plat book required by Section 68 of the Revenue Act of 1919, Acts 1919, page 307, Section 68, and brought forward as Section 172 of the Revenue Code of 1929.

"The contract was fully and efficiently performed by this party, after office hours, and no part of the work was done during the regular hours of her employment. The Tax Assessor was not a party to the contract, nor in anywise interested therein, and no part of the compensation was paid to or through him. Upon completion of the work, a

reasonable compensation was paid to the party who performed the work, for such services.

"Was the the Board of Revenue authorized to so appropriate and pay for these funds to this party?"

It is my opinion that your inquiry must be answered in the affirmative.

For a thorough understanding of the question involved, a review of the pertinent statutes is essential. The Fourth Amendment to the State Constitution places the Tax Assessor of Montgomery County upon a straight salary basis and provides that the legislature may further regulate by later enactment, and pursuant thereto the legislature of 1931 enacted a statute, the pertinent section of which (Acts 1931, Section 1, p. 172) is as follows:

> "Section 1: **That the tax collectors, and tax assessors** in all counties in this State which now have, or which may hereafter have a population of seventy-five thousand people and less than one hundred thousand people, according to the last Federal Census, or any such census which may hereafter be taken, where such officers are constitutionally paid upon a salary basis, **shall be an annual salary, which shall be paid to and received by the said officers in lieu of all other compensations, fees or emoluments**, as follows: The tax collectors shall receive an annual salary of four thousand dollars net, except as herein otherwise provided, and an allowance of thirty-four hundred dollars per annum for office help as follows: one clerk at twenty-four hundred dollars per annum and one thousand dollars per annum for other expenses and ex-officio services of the said tax collectors. The said one thousand dollars to be paid to the said tax collectors in monthly installments and the tax assessor shall receive an annual salary of four thousand dollars net except as herein otherwise provided, and an allowance of six thousand four hundred dollars per annum for office help as follows: one clerk at twenty-four hundred dollars per annum; one clerk at eighteen hundred dollars per annum; one clerk at twelve hundred dollars per annum; and one thousand dollars per annum for other expenses and ex-officio services of the said tax assessors. The said one thousand dollars to be paid to the said tax assessors in monthly installments." (Underscoring ours).

With reference to the preparation of the Plat Book in question, it was first authorized by Legislature of 1915 (Acts 1915, p. 411, Section 56), the Act being in the following language:

> **"The assessor shall make** a complete plat book or books of all real estate in his county, unless such book or books have already been provided, in a form to be prescribed by the State board of equalization, in which the name of the owner shall be entered on each separate plat or subdivision where the same is practicable. The court of county commissioners, or court of like jurisdiction, shall pay the assessor for making out the plat book required by this and the preceding section, a sum not exceeding one hundred dollars in counties of twenty-five thousand inhabitants, and upwards, and fifty dollars in county of less than twenty-five thousand inhabitants." (Underscoring ours).

This Act was amended by Acts 1919, section 68, page 307, to read as follows:

> "Section 68. The tax assessor shall make, **or cause to be made,** a complete plat book or books of all real estate in his county, unless such

book or books have already been provided, in a form to be prescribed by the State Tax Commission, in which the name of the owner shall be entered on each separate subdivision, together with the assessed value thereof. The court of county commissioners or court of like jurisdiction, shall pay out of the general fund of the county, for making out of the plat books required by this and preceding section, a reasonable amount of money **as compensation to the person making out such book or books."** (Underscoring ours).

Thus it will be seen that as originally enacted the tax assessor was required to make the plat book himself, and if this were the statute in force at the time of the contract in question, there is no doubt that the preparation of the Plat Book would have been a part of the mandatory duties of the tax assessor for which he would under the Montgomery County Amendment be entitled to no additional compensation. But, the legislature of 1919, evidently realizing that the preparation of such book required certain technical training and skill of which all tax assessors might not be possessed, amended the original enactment by inserting just after the phrase "the tax assessor shall make," the additional phrase **"or cause to be made"** and by further providing for the payment by the Board of Revenue or like governing body, of the compensation for the preparation of such plat book, **to the person performing said work.** It is, therefore, readily apparent that the legislative intent was that the preparation of the Plat Book was not a part of the routine work of the tax assessor's office but that it might be contracted for and completed by an outsider. It is readily apparent, therefore, that if the contract in question had been made with and performed by one not connected with the tax asesssor's office, it would have been entirely legal and payment of the compensation for its preparation clearly an authorized disbursement. The inquiry then, is whether the fact of employment in the tax assessor's office would disqualify one with whom the contract had been made from receiving compensation therefor. It is my opinion that it would not; that the Board of Revenue is justified in paying a reasonable compensation **to the party who prepared the plat book** irrespective of whether that party was connected with the tax assessor's office or not.

A clerkship in the tax assessor's office is not a constitutional or public office. (STATE VS. McDONALD, 178 N. E. 266). Acts 1931, p. 172, section 1, provides the annual salary of the tax assessor, and tax collector, "which shall be paid to and received **by said officers** in lieu of all other compensations, fees or emoluments." What officers?—The said officers, to-wit, tax assessors and tax collectors. The Act subsequently provides that said officers shall be allowed certain additional funds for clerical assistance, but nowhere in that section or elswhere is there any constitutional or statutory inhibition against the clerical assistants in said respective offices accepting outside employment or receiving outside compensation.

Under your statement of facts the contract in question was awarded to the party, and the work was done by her, not as an employee of the tax assessor's office, but rather as an individual, and the work was performed after office hours and on her own time. The tax assessor was not a party to the contract between her and the Board of Revenue, nor did he receive any part of the compensation nor was he in anywise interested therein under your statement of facts. It was paid direct to the **person performing the work** as authorized in the Act.

Under such circumstances, I am convinced that such payment of compensation to her was a legal and authorized expenditure by the board.

Trusting this answers your inquiry, I am,

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 16, 1936.

Hon. T. A. Simpson,
County Commissioner,
Fayette County,
Berry, Alabama.

Counties—authorized to expend an amount not to exceed one-third of its share of the gasoline tax in the payment of past incurred indebtedness created by it in the construction and for maintenance of its roads and bridges (Act No. 51, H. 61, approved March 26, 1936.)

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 2, 1936, which is as follows:

"Can any part of the gasoline tax of Fayette County be applied on payment of past indebtednes for road work which was contracted for and done in the year 1916 and the two or three years following?"

The answer to your inquiry is now governed by Act No. 51, H. 61, approved March 26, 1936, which is as follows:

"Section 1. The Board of Revenue or Court of County Commissioners or other governing body of each and every county in Alabama is hereby authorized and empowered to expend an amount not to exceed one-third of the total amount that may be received by each county from the levy and collection of any tax on gasoline in the payment of any debt that may have been heretofore incurred by such county for the construction and/or maintenance of roads or bridges.

"Section 2. All expenditures heretofore made for the purposes and from the funds named in Section 1 of this Act are hereby ratified.

"Section 3. This act shall become effective upon its passage and approval."

It will be seen from the above that a county now is authorized to expend an amount not to exceed one-third of its share of the gasoline tax in the payment of past incurred indebtedness created by said county for the construction and for maintenance of its roads and bridges.

An opinion of this office rendered to Chas. W. Lee, State Comptroller on February 7, 1936, held that Acts 1932, p. 225, was repealed by the adoption of the 1935 Revenue Act. This opinion is correct, but its effect is changed by the adoption of the 1936 Act above set out. The 1936 Act had the effect of reenacting the 1932 Act which was repealed by the Revenue Act of 1935. The 1936 Act is now in full force and effect.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 16, 1936.

Hon. Matt A. Boykin,
Probate Judge, Mobile County,
Mobile, Alabama.

License and Taxation—A conditional sale contract assigned before recordation to a National Bank is not exempted from registration tax levied by Schedule 94 of Section 348 of the Revenue Act of 1935, when offered for record by the assignee bank.

An assignment of an unrecorded mortgage, when such assignment is offered for record by a National Bank, is not subject to the registration tax levied by the Revenue Act of 1935.

When an instrument offered for record shows on its face facts which raise in the mind of the Probate Judge to whom offered for record the question of whether or not the instrument recites the true consideration of the transaction, such Probate Judge may make inquiry to ascertain the real consideration for the purpose of ascertaining and collecting the registration tax provided by law.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Enclosed please find photostatic copy of conditional sale from Quigley's Specialty Co. Inc. to Mrs. Cora P. Breland, and the conditional sale transferred by the Quigley's Specialty Co. Inc. to the Merchants National Bank of Mobile. Kindly advise if this instrument is taxable. In this conditional sale there is no cash consideration recited, therefore the $233.28 is in deferred payments. We have collected a tax of 45c but the Bank is objecting to this tax and as we will have quite a number of these instruments would like to get your opinion as quickly as possible.

"The transfer is attached to the conditional sale and offered for record together."

It appears from the photostatic copy attached to your request that Quigley Specialty Company, a corporation, has sold to a buyer a certain household appliance, and to secure the unpaid balance of the purchase price, has retained title thereto by a conditional sale contract executed to it by the buyer; that this contract, before being recorded, was assigned by the Quigley Company to a National Bank in Mobile and that thereafter the National Bank offered for record the original conditional sale contract and the assignment thereof and protests paying the tax levied thereon by Schedule 94 of Section 348 of the Revenue Act of 1935 presumably on the ground that mortgages, contracts, etc. owned by National Banks (which are agencies of the United States) are exempted from payment of the tax.

Your inquiry involves three questions, namely:

1. Is an assignment to a National Bank of a mortgage or other contract for the security of a debt subject to the registration tax when said assignment is offered for record?

2. Is a mortgage or other contract of the kind and type contemplated by the statute, which is subject to registration tax when made in view of the

fact that no party to the instrument is an agency of the United States, exempted from liability to said tax in the event that, before recordation, it is assigned to a National Bank, and then offered for record by said Bank as assignee?

3. When an instrument offered for record on its face raises in the mind of the Probate Judge to whom the same is offered for record, the question as to whether or not the instument recites the real and true transaction or whether there was in fact other consideration therefor, is said Probate Judge authorized to make inquiry to ascertain the true consideration of the instrument to the end that the proper registration tax may be levied and collected?

The first question has been answered by opinion of this office addressed to Hon. Eugene H. Hawkins, Probate Judge of Jefferson County (Biennial Report of Attorney General 1932-1934, page 460), which holds that the tax should not be charged upon an assignment offered for record by an agency of the United State, by which assignment an unrecorded mortgage of private parties is conveyed and assigned to the said governmental agency.

The second question presents more difficulty.

Inasmuch as National Banks are agencies of the United States (First National Bank v. Anderson, 46 Sup. Ct. 135, 269 U. S. 341, 70 L. ed. 295), the power of a State to tax them, directly or indirectly, involves a Federal question upon which the decision of the Supreme Court of the United States is controlling and obligatory upon the State Courts. National Bank v. Fairweather, 263 U. S. 103, 44 Sup. Ct. 23, 68 L. ed. 191.

When the question of the power of the State of Alabama to charge the registration tax here involved upon mortgages, etc. made payable to agencies of the United States was before the Supreme Court of Alabama (Crosland v. Federal Land Bank, 207 Ala. 456), it was there decided that "if it (The Federal Agency) does not desire to record its mortgage, the same is not liable to a tax; but if it wishes the benefit and protection of our registration laws, it must, like all others, pay for the privilege."

However, on appeal to the Supreme Court of the United States (Federal Land Bank v. Crosland, 67 L. ed. 705) the Court there said:

> "It has levied a tax on mortgages, using the condition attached to registration as a practical mode of collecting it. In doing so, by the construction given to the statute by the Supreme Court (of the State) it has included mortgages that it is not at liberty to reach."

At the time of the execution of the conditional sale contract here under consideration, no Federal Agency being interested or involved, it was not, within the classification laid down by the Supreme Court of the United States, "such an instrument as the registration tax was not at liberty to reach." The National Bank which obtained it as assignee took it with full knowledge that the mortgage tax levied thereon was due and would have to be paid if and when the same was offered for record (Federal Land Bank v. Crosland, 67 L. ed. 705). Under such circumstances, the collection of the registration tax is not in fact taxing an instrumentality of an agency of the United States, but is taxing an instrumentality of such agency's assignor. I can see no logical distinction between requiring a National Bank to pay the registration tax **due** upon an instrument at the time the Bank acquires title thereto, when offered for record, and requiring such Bank to

pay ad valorem taxes on personal property when such taxes were due and unpaid at the time the Bank acquired title to the said personal property.

I am, therefore, of the opinion that the conditional sales contract assigned to Merchants National Bank of Mobile should not be received for record except upon the payment of the registration tax required by law. Of course, the National Bank might have required its assignor, the Quigley Company, to pay the tax to it or to the proper authority before it accepted an assignment of the same. If it failed to require such payment it stands convicted of taking title to property on which unpaid taxes are due; and the exemption afforded ought not to apply to past due taxes legally levied.

I reiterate that this construction is based on the decision of the United States Supreme Court in the Crosland Case, supra, "that the tax is levied on mortgages and that the condition attached to registration is merely a practical method of collecting it." This view is binding and obligatory on the State Courts in construing the taxing statute only in so far as the question of the application of the said statute to instrumentalities of Federal Agencies is concerned. On all oher applications of the statute, the Supreme Court of Alabama has the unquestioned right to place on the statute such construction as to it seems just and proper.

The third question heretofore has been answered by an opinion of this office addressed to Hon. L. G. Garrison, Probate Judge of Walker County, dated September 16, 1935, a copy of which is transmitted herewith.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 16, 1936.

Hon. Frank M. Stewart, Secretary,
State Milk Control Board,
Montgomery, Alabama.

Milk Control Board—

Fines—Fines collected for violations of Acts of 1935, page 219, Section 23 held to go to the County in which prosecution is commenced.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of March 30, 1936, requesting my opinion as follows:

"We have been requested by Mr. Ed Hewitt, Clerk of the Inferior Court, Mobile County, for an opinion from the Attorney General, as to what disposition should be made of funds received from court proceedings under the State Milk Control Law, approved July 9, 1935.

"For your information we have had a considerable number of cases in the Mobile Court, and as I understand it, this money is being held pending a decision of the Attorney General. Therefore, we would appreciate this opinion at the earliest convenience."

I presume you mean by the term "funds received from court proceedings" to ask what disposition may be made of **fines** collected for violations of the Milk Control Act of 1935 (Acts 1935, page 219, Section 23).

Section 23 of this Act provides as follows:

"Any person violating any provision of this Act, or any lawful order, rule or regulation of the Board shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than Five Hundred Dollars ($500.00). Each day's violation of any such provision, order or regulation shall constitute a separate offense."

You will observe that this law makes no disposition of the funds collected as fines for violation of the provisions of this Act.

Section 4038, Code of 1923, provides as follows:

"All fines and forfeitures shall be paid in money and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particular county."

See also case of Ryan, Treasurer v. Collins, 196 Ala. 480.

It is my opinion that Section 4038 of the Code of 1923 controls the situation outlined in your letter, and the fines collected under this Act must necessarily go to the county in which prosecution was commenced.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 16, 1936.

Hon. Henry S. Long, Chairman,
State Tax Commission,
Capitol.

Taxation: Income from contract with United States.

A corporation holding a contract with the Federal Government is not an officer or employee of the Federal Government within the meaning of Section 345.10 of subdivision (f) of the Income Tax Act of 1935, and income earned under such contract is not exempt under said subdivision.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 6, 1936. You quote from letter of Thomas G. Watkins, Stahlman Building, Nashville, Tennessee, Attorney for the Cumberland River Sand Company, claiming a refund of income tax paid under protest, claiming that such income is exempt as the company is an agency of the Federal Government. You furnish the following statement of facts:

"The Cumberland River Sand Company, a foreign corporation, filed an income tax return with the State Tax Commission for the year 1935, and made payment under protest of $189.44, being one-fourth of the tax shown to be due by the return. According to information, this corporation is domiciled in Tennessee, and its entire operation in Alabama consists of a contract with the Tennessee Valley Authority, a Governmental Agency. The income of the corporation in Alabama is, therefore, received indirectly from the United States Government through the Tennessee Valley Authority.

"Section 345.10, sub-division (f) of the Alabama Income Tax Law applicable to the year 1935 is quoted as follows:

" 'Gross income does not include salaries, wages and other compensation received from the United States by **Officers or employees thereof,** including persons in the military or naval forces of the United States.'

"At the request of the taxpayer, an opinion is hereby requested as to whether or not income received by said corporation under contract entered into with the Tennessee Valley Authority constitutes gross income subject to tax under the State Income Tax Law."

From your letter, you indicate that the Cumberland River Sand Company has a contract with the Federal Government. There is nothing in your letter indicating that it is an officer or employee of the United States, but to the contrary you show that it is a contractee. Under the authority of Metcalf & Eddy vs. Mitchell, Administratrix, 269 U. S. page 514, I am of the opinion that such income is taxable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 16, 1936.

Hon. R. H. Williams,
Judge of Probate,
Marshall County,
Guntersville, Alabama.

Licenses—Under facts stated, party not liable for transient dealers' license imposed by Schedule 147 of the Revenue Bill of 1935.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 28, 1936, in which you request my opinion as follows:

"Mr. William J. Beal of Route 3, Arab, Alabama is an ex-soldier enlisted on September 5, 1918 and served until December 23, 1918, and has his horonable discharge from the United States army. He is a bona fide resident citizen of Marshall County and has been all of his life. He is a white man and a legal voter in Marshall County. He also has a disability rating of 25 per cent that has been issued to him by the Veterans Administration for a service connected disability, and is drawing on this disability compensation to the amount of $25.00 per month.

"Mr. Beal is engaged in the following business: He has a four-door Chevrolet sedan automobile. He removed the back seat of the car and goes from house to house buying chickens, eggs and butter only, paying cash for each purchase as he buys it. He handles no goods, wares or merchandise of any other nature. He then takes his chickens, eggs and butter to his home and there sells them to other produce dealers who desire to come there and buy them. He does not get out and peddle them anywhere, and makes no sales except at his home.

"He has been cited by the License Inspector to take out a license as a traveling dealer for chickens and eggs, under Schedule 147 of Section

348 of Article 8, Chapter 1 of the Act of the Legislature, approved July 10, 1935.

"Mr. Beal has presented to me his honorable discharge, his certificate of his disability rating of 25 per cent issued to him by the United State government, and I am satisfied from the proof offered that he is a bona fide permanent resident of this State and has offered to take out and pay for a license under said Schedule 147 of said Act of the Legislature approved July 10, 1935, but demands or requests that I give him credit for $25.00 on the $30.00 license to the State, and make no charge for the County license, and he offers to pay the balance due for the State license above the $25.00.

"Schedule 147, above referred to, of said Act provides among other things as follows:

" 'Provided further the taxes herein levied are not subject to any specific exemption.'

"The Act of the Legislature approved September 13, 1935, which is subsequent to the former Act mentioned, and which is the act granting the exemptions to service men, among other things has this provision in it in Section One:

" 'Provided that no exemption, deduction or commutation shall be allowed any person for the license or tax on what is commonly known as Rolling Stores.'

Question: Does the Act approved September 13, 1935 with the above quoted provision in it repeal that provision above quoted in Schedule 147 of the Act approved July 10, 1935?

Question: Is Mr. Beal engaged in running or operating what is commonly known as a 'Rolling Store'?

"Section 12 of the Act approved September 13, 1935 requires the Probate Judge to issue a license if the veteran is enlisted to the benefit of the Act.

"Question: Is it my duty under the provisions of the Act approved September 13, 1935 which is found on Pages 1057 to 1060 of the Acts of 1935 to issue the license to Mr. Beal provided for under Schedule 147 and allow him the deductions claimed?"

In my opinion, the party mentioned in your inquiry is not such a transient dealer, as defined by Schedule 147 of the Revenue Bill of 1935, as to be liable for the license provided by that schedule.

I assume, of course, that said party keeps regular place of business open at all times in regular business hours so that he does not come within the provisions of Section (c) of the above mentioned schedule.

The answer to your first inquiry dispenses with the necessity of answering the other questions asked. For your information, however, I call your attention to an opinion in the Quarterly Report of the Attorney General at page 321, defining a "rolling store."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 17, 1936.

Hon. Fred H. Price, Clerk,
Circuit Court of Autauga County,
Prattville, Alabama.

Elections voters. Temporary removed.

If a voter moves from one precinct to another precinct in the same county, and his abode is temporary in the latter precinct, in this event he may retain his citizenship and right to vote in the beat from which he moves. This is a matter largely in the breast of the individual voter.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 3, 1936, in which you request my opinion as follows:

"Does not Section 363, Code of Alabama, 1923, and the Opinion by Assistant Attorney General Haynes directed to Hon. D. W. Crosland, Judge of Probate, Montgomery County, pertain only to the registration of voters rather than to the subsequent changing of a voting place of a voter?

"Who has the authority to make such change, the Board of Registrars or the Judge of Probate?"

"Doesn't the voter have to ask for such a change?

"Until January of 1935 I have been a life long resident of Beat 11 of this County. In 1934 I was elected to the Office of Clerk of Circuit Court of Autauga County and took office in January 1935. I consider this as a temporary residence and I think I have a right to vote as heretofore. In a list recently compiled and released by the Judge of Probate my name was placed in Beat 1, the place of my office, and he bases his authority on the above stated Section and Ruling."

You state that you have been a life long resident of Precinct 11 of Autauga County; that you were elected Clerk of the Circuit Court in 1934 and that in January 1935 you moved to Prattville to enter upon the duties as such clerk; that you consider your residence in Prattville temporary and I gather from your letter that you desire to retain your citizenship in Precinct 11 and vote in this Beat. This you can do if you so desire.

This office has repeatedly held that a temporary absence by a voter from his home or residence does not disqualify him from voting in the precinct of his home. This is a matter within the breast of the individual voter. If, however, he moves from one precinct of a county to another precinct in the same county, takes up his permanent residence in the latter, with no intention of subsequently returning to his former precinct to live, then he should vote in the precinct of his present residence. But, if on the contrary, he does entertain the idea of returning to his former residence or beat, then, in that event, he may retain his citizenship in his former beat and vote there. As said above, this is a matter governed by the intention of the individual voter.

This is not in conflict with the opinion you refer to rendered to Hon. D. W. Crosland, Judge of Probate of Montgomery County, Biennial Report of Attorney General, 1930-32, p. 759.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 17, 1936.

Hon. Jno. M. Maxwell,
Tax Assessor,
Morgan County,
Decatur, Alabama.

Tax Assessors—Fees and Compensation.

(1) Tax Assessors should collect the fees provided by Sections 47 and 54 of the 1935 Revenue Act.

(2) The compensation authorized by Sections 58 and 59 should be paid the Tax Assessor, the amount of which is to be included in the total receipts of his office, in determining whether there is a surplus over and above the amounts fixed by Section 23 for compensation and expenses.

(3) The commissioners court may contract with a third person for the performance of the duty prescribed by Section 60 and compensate such person.

(4) Unless the Tax Assessor does the work required by Section 60, and receives the compensation, such amount is not to be included in the receipts of his office in determining whether there is a surplus over the amounts fixed by Section 23 for compensation and expenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"Please advise:

"Section 41; 50c fee delinquent demand. (1) Is Assessor entitled to this fee if no demand has been made. (2) If Assessor is on fee basis, are all fees under Sections 41, 47 and 54 optional or otherwise.

"Sections 58 and 59: Is this compensation deductible from the total of $5,400.

"Section 60: This section reads: "The Tax Assessor shall make, OR CAUSE TO BE MADE————The Court of county commissioners———— shall pay out of the general fund of the county————a reasonable compensation TO THE PERSON PERFORMING SAID WORK————. (1) Should this be a charge as against the total of $5,400. If so; (2) If the Assessor should employ someone not connected with his office to perform this work, and he, himself received no compensation, how could this be a charge as against his total.

"All of above refer to the General Revenue Code 1935."

In answer to question (1) relating to Section 41 of the 1936 Revenue Act, I enclose copy of opinion to M. K. Marshall, Tax Assessor of Randolph County, dated March 7, 1936, which fully answers your question.

Answering question 2, I advise that in my judgment upon parity of reasoning with the cited opinion, the fees provided by Sections 47 and 54 must be collected by the Assessor.

Answering question 3, I advise that Section 23 fixes the maximum amount which Tax Assessor can receive at $5,400. It also provides a maximum amount for the expenses of his office. If the compensation from all sources exceeds the maximum amount payable to him and the amount fixed for expenses, such excess is payable into the County Treasury. The compensation authorized by Sections 58 and 59 should be paid him and included in the total receipts of his office to determine whether there is a surplus.

See Quarterly Report of Attorney General, Vol. 1, p. 69 and p. 154.

Your last two questions are answered in principle by opinion to Hon. Cyrus B. Brown, President of Board of Revenue of Montgomery County, dated April 15, 1936, a copy of which is enclosed.

This opinion holds that the Board of Revenue may contract with a third party for the performance of the work required by Section 68 of the 1919 Revenue Act, and that such compensation is not a part of the Assessor's compensation.

Section 68 appears as Section 60 of the 1935 Act and is in the same words. It is therefore subject to the same construction.

It is true that the Tax Assessor of Montgomery County is paid on a salary basis, but the theory of the opinion is that the compensation is not paid to the assessor but to a third person.

Therefore if the Tax Assessor "causes to be made" the required book by a third person, the County must pay a reasonable compensation to such person, and if the Tax Assessor receives no part of such compensation, it does not affect his maximum for compensation and expenses.

If, however, on the other hand, he chooses to perform the work himself and receive the pay therefor, such amount should be included in his total receipts in determining if there be a surplus over and above his maximum compensation and expenses.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 17, 1936.

Hon. R. L. Holcombe,
Sheriff, Mobile County,
Mobile, Alabama.

Sheriffs—entitled to seizure fee of $3.00 provided by Section 4768 of the Code of Alabama, 1923, regardless of amount of liquor seized.

Section 4654 held not to restrict provisions of Section 4768.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of March 30th in which you request my opinion as follows:

"I desire your opinion upon the following questions:

"1. Where seizures of prohibited liquors are made under Article 11 of Chapter 167 of the Code of Alabama, is the Sheriff entitled to the $3.00 seizure fee as provided in Section 4768 regardless of whether or not said liquor amounts to less than one gallon?

"2. Do the provisions of Section 4652 of the Code place any restrictions upon the fees of the Sheriff claimed under Section 4768 of the Code?"

Upon further consideration, I am of the opinion that a sheriff making a seizure under Article II of Chapter 167 is entitled to a seizure fee of $3.00 as provided by Section 4768, without regard to the amount of liquor taken, whether one pint or fifty gallons.

I call your attention to the following from Section 4768 of the Code of Alabama, 1923, which provides for an allowance for officers making a seizure of liquors under a search warrant:

"There shall be allowed the officer making the seizure under a search warrant the sum allowed by Section 4704, of $3.00 * * *."

You will note that Section 4768 was adopted from laws enacted by the Legislature of 1909 and 1915 (General Acts 1909, p. 63, Sec. 22; General Acts 1915, p. 8, Sec. 22). These enactments merely provide that "there shall be allowed the officer making the seizure under a search warrant the sum of $3.00 * * *." There is no provision in the original Acts of 1909 and 1915, carried forward by the Code Commission as Section 4768, which shows an intent to increase or restrict the fees authorized thereby depending upon the amount of liquors seized. It is clear, therefore, that in the absence of some other limitation, the person making the seizure under Section 4768 is entitled to $3.00 in any event.

The question now arises as to whether that portion of Section 4768 which provides: "allowed by Section 4704", constitutes such a limitation. In my opinion, it does not. Section 4704 has no connection whatsoever with the subject of fees. An assumption that a typographical error has been made and that it was the intent of the Code Commission to refer to Section 4654 is shown to be indeed violent and entirely unwarranted when the language of Section 4768 is carefully examined.

You will note that Section 4768 provides that the officer shall be entitled to "the **sum** allowed by Section 4070 **of $3.00** * * *." Section 4654, on the other hand, authorizes the payment on a sliding scale of **sums**, only one of which is $3.00, the others ranging upward. It may be further noted that Sections 4767 and 4768 provide for fees "where an officer seizes **liquor and vessels**," and contemplate a penal proceeding in rem, while Section 4654 authorizes fees to be taxed for arrest of "any person in possession of an unlawful quantity or quantities of prohibited liquors * * *." See State ex rel Holcombe v. Stone, 155 So. 636, and State ex rel Holcombe v. Stone, 1st Div. 891, (ms). Indeed, the Legislature of Alabama has taken notice of the fact

that the provision that the arresting officer shall receive the sum "provided by Section 4704" is of no efficacy, by amending Section 4768 omitting the provision quoted (General Acts 1935, p. 727).

Section 4654 has no connection with Section 4768. They are entirely separate, each has a distinct field of operation.

It is, therefore, my opinion that Section 4654 in no way restricts the amount of fees payable to the officer under Section 4768 and that an officer making a seizure under Section 4768 is entitled to a fee of $3.00 regardless of the amount seized.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 17, 1936.

Hon. A. H. May,
Sheriff, Houston County,
Dothan, Alabama.

Bail—Appeals in Habeas Corpus proceedings.

Under Act No. 122, approved April 14, 1936, amending Section 3238 of the Code as amended by Acts 1927, page 76, a sheriff is authorized to release from custody pending appeal a prisoner charged with a capital offense when an appeal from an order granting bail in Habeas Corpus proceedings has been taken and the court has prescribed the amount of such bail and the same has been given.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 15 in which you state:

"I attach copy of Act No. 122, approved April 14, 1936, amending Section 3238 of the Code as amended by Acts of 1927, page 76, approved June 16, 1927, relating to appeals in Habeas Corpus proceedings.

"I have in my custody a prisoner charged with a capital offense for whom habeas corpus proceedings were held before the Hon. S. P. Poyner, Judge of Probate and Ex - Officio Judge of the County Court of Houston County, and who granted bail to such prisoner. Appeal has been taken from his order granting such bail. I desire to know if, under the authority of the amended Act, I am authorized to release such prisoner from custody upon his giving bail with sufficient sureties conditioned that he will appear before such court or officer as may be prescribed by the judge pending such appeal in the habeas corpus proceedings."

I have examined the copy of Act No. 122 which you attach and have compared it with Act No. 113, approved June 16, 1927, (Acts 1927, page 76). It is to be noted that the 1927 Act contained the following provision: **"but except in capital cases** the party may give bail with sufficient sureties conditioned that he will appear before such court or officer as may be prescribed by the judge, and abide the judgment rendered."

The Act 1936 omits the words "but except in capital cases" and is otherwise the same.

By thus amending the provision with the ommission of the words "except in capital cases", evidences in my judgment a clear legislative intent to remove the exception and that bail may be allowed in all cases pending the appeal in the Habeas Corpus proceedings.

In my opinion, if the court fixes bail and the same is given with sufficient sureties conditioned upon the prisoner appearing before the court or officer as prescribed by the judge, then you are authorized to release the prisoner from custody.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 17, 1936.

Hon. W. E. Butler,
Judge of Probate,
Madison County,
Huntsville, Alabama.

Probate Judges—In counties where the office of the Judge of Probate collects fees and earnings in excess of six thousand dollars and the amount of expenses, as provided for in Section 370-A of the 1935 Revenue Act and as limited by the Board of County Commissioners, when the Probate Judge employs clerical assistants as provided for in Section 402 of the 1923 Code, as amended by Act No. 251, H. B. 429, (General Acts 1931, p. 293) and causes the assistants to be paid by the Board of County Commissioners the amount provided for in Section 402 of the 1923 Code of Alabama, as amended, said amount paid is not deducted from and considered a part of the allowance for clerks, as provided for in Section 370-A of the 1935 Revenue Act, and as limited by the Board of County Commissioners.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 4, 1936, in which you state:

"Section 402 of the Alabama Code of 1923 as amended by General Acts of Alabama 1931, appears to provide that the Judge of Probate may employ extra assistants and clerical help to supply the list of qualified voters to the election inspectors. Such sum spent is not to exceed the amount obtained by multiplying the number of names on the list by five cents.

"Section 370-A of the Revenue Act of 1935, General Acts of Alabama 1935, page 564, provides for a limitation to be placed upon the salaries and office expenses of the Judge of Probate with the further provision that the County Board of Commissioners may reduce said allowance where the Judge of Probate is not Chairman of the Board."

You request my opinion:

"In Counties where the office of the Judge of Probate collects fees and earning in excess of six thousand dollars and the amount of expenses, as provided for in Section 370-A of General Revenue Act of 1935, and as limited by the Board of County Commissioners, may the Judge of Probate employ clerical assistants as provided for in Section

402 of the Code of 1923 as amended in 1931, and cause to be paid by the Board of County Commissioners to such extra help, the amount provided for in Section 402 of the Code of 1923 as amended, without having this amount deducted from or considered part of the allowance for clerks, etc., as provided for in Section 370-A of Revenue Act of 1935, and as limited by the Board of County Commissioners?"

In my opinion your question should be answered in the affirmative.

The employment of clerical assistants to make lists of the qualified voters is not a part of the regular routine duties of the Probate Judge, and the expenses incurred should not be considered, or included in the general expenses of running the office.

I call your attention to Section 370-A of the 1935 Revenue Act, p. 383, which is as follows:

"Section 370-A. The fees, compensations and earnings of the Judges of Probate allowed under the revenue laws of the State, shall not altogether with all other fees, compensations, allowances and earnings to them, exceed six thousand dollars net per annum, after the payment of the salaries for clerks, typists, stenographers and other office expenses in Counties where the Judge of Probate is not paid a fixed salary; and the expenses of the office in such Counties for Clerks, typists stenographers and other expenses shall not exceed in counties having a population according to the Federal Census as follows: 10 to 30 thousand $300.00 per month; 30 to 40 thousand $450.00 per month; 40 to 50 thousand $750.00 per month; 50 to 85 thousand $850.00 per month; 85 to 110 thousand $1,325.00 per month; 110 to 125 thousand $1,500.00 per month; 125 to 500 thousand $3,000.00 per month; Provided, however, in any county where the Judge of Probate does not act as Chairman of the Board of County Commissioners, or such other like governing body, the Board of County Commissioners or such other like governing body, may reduce the salaries for clerks, typists, stenographers and other office expenses, but not to exceed fifty per cent of the Schedule set out herein."

In my opinion the limitations as prescribed by the section, supra, should only apply to the usual expenses of running the office, as are paid out of the fees, commissions and other compensations inuring to such office, and not to other expenses of the office, which are provided for by special statutes. The usual expenses of the office, such as the salaries for regular clerks and stenographers are paid out of the money taken in by the office, while the compensation of the clerical assistants to make lists of the qualified voters, is provided for by Section 402 of the 1923 Code of Alabama, as amended by Act No. 251, H. B. 429 (General Acts 1931, p. 293) a part of which is as follows:

"* * * Such assistants shall be paid out of the county treasury by warrants drawn by the commissioners court, board of Revenue, or other governing body, on certificate of the probate judge, accompanied by the certificates of the person being paid, showing the amount is due under the provisions of this article; but the entire amount spent for such assistants and clerical help shall not exceed a sum equal to the amount obtained by multiplying the number of names on said list by five cents. * * *"

I refer you to an opinion of this office to Hon. W. L. Pratt, Judge of Probate of Bibb County, under date of October 15, 1935, in Quarterly Report of Attorney General, Vol. 1, p. 68.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 17, 1936.

Hon. C. B. Cox,
Member of the House of Representatives,
C A P I T O L.

House Bill No. 3, Special Session of Legislature 1936, constitutional.

Opinion by Assistant Attorney General Lawson.

Dear Sir:

This is to acknowledge receipt of your letter of recent date, which is as follows:

"I will thank you to please render an opinion regarding the constitutionality of House Bill No. 3. This is a local bill applying to Chilton County only."

I have examined this bill very carefully and in my judgment it does not violate any provision of the Constitution of this State. I have checked the Journals of the House of Representatives and of the Senate, and find that the passage of this Act was in conformity with all sections of the Constitution relating to the passage of bills by the Legislature of this State.

I am, therefore, of the opinion that the aforementioned Act is constitutional.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

April 17, 1936.

Hon. Ernest L. McClure,
Clerk Circuit Court,
Lauderdale County,
Florence, Alabama.

Bastardy—Bond required in bastardy case by Section 3427 Code of 1923, held not to secure costs on appeal.

1. Security for costs, in absence of proper affidavit, must be offered on appeal in bastardy case, but bond held unnecessary under Section 3439 of the Code of 1923.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of March 21, 1936, requesting my opinion as follows:

"I am enclosing a copy of an appeal bond executed in a **Bastardy Case** and want an opinion on the liability of the sureties as to the complete costs in this case.

"1. Would the sureties on this bond be liable for the costs of the appeal if the decision of the lower court was affirmed by the Supreme or Appellate Court?

"2. Would the sureties be liable for the costs of witnesses, trial tax and Sheriff's and Clerk's fees if the decision of the lower court was affirmed?

"3. When an appeal is taken in a Bastardy Case should there be **two bonds** executed before the Defendant can be released? Should there be an appeal bond and also a bond for the payment of the judgment and court costs?

"Please let me have this opinion as soon as you can, as I have several cases like this and there seems to be a difference of opinion among the attorneys as to what is proper."

You also enclose a copy of an appeal bond in the sum of seven hundred dollars ($700.00), which contains the following conditions for payment:

"The condition of the above obligation is such that: WHEREAS ....., Defendant; was convicted in the Law & Equity Court of Lauderdale County, Alabama, on the 7th day of Oct., 1935 of the offense of Bastardy and was on the 8th day of October, 1935, sentenced to a period of twelve months hard labor for Lauderdale County, Alabama and

WHEREAS, the said ..... defendant has prayed for and obtained an appeal from said judgment,

NOW THEREFORE, if the said ..... defendant, shall prosecute the said appeal to effect, or failing therein, shall appear and serve the sentence of the Court, then this obligation shall be void, otherwise remain in full force and effect.

And as against this obligation, we and each of us, hereby waive all our rights of exemption as to personal property under the Constitution and Laws of the State of Alabama."

In reply, I wish to advise you that in my opinion your first two inquiries must be answered in the negative. The bond offered in this case and inclosed with your request does not purport to offer security for costs arising either in the lower court or on the appeal. In my judgment, the bond, supra, is nothing more than an appearance bond and it is conditioned upon the appearance of the defendant to serve sentence in the event the judgment of the lower court be affirmed.

In reply to your third question, I refer you to Sections 3427 and 3439 of the Code of 1923. Section 3427 provides as follows:

"On the trial of such issue, if found against the defendant, judgment must be rendered against him for the costs ,and he must also be required to enter into bond with surety, to be approved by the judge, in the sum of one thousand dollars, payable to the state, and conditioned to pay the costs of the proceeding, and such sum, not exceeding one hundred dollars a year, as the court may prescribe, on the first Monday in January, in each year, for ten years, to the judge of probate of the county, for the support and education of the child, which bond must be recorded."

You will note that the bond contemplated by this Section is mandatory, if the defendant is to be released after conviction, when he prosecutes no appeal from the judgment. Section 3439 Code of 1923 provides as follows:

> "Either party may appeal to the supreme court or court of appeals within thirty days after judgment. If the appeal is taken by the state, the complainant must give security for the costs of the appeal, if the judgment is affirmed; and the defendant, also, if the appeal is taken by him, must give the same security, to be approved by the Clerk of the circuit court, the names of the sureties certified with the record to the appellate court, and execution may issue for the costs of the appeal against them from such court, if the judgment of the circuit court is affirmed. But when either the complainant or defendant makes affidavit that she or he is unable, after diligent effort, to make the appeal bond, they may appeal **without any bond.**"

The provisions of this Section do not make a cost **bond** mandatory, if the proper affidavit is made concerning inability to make such a bond, but in the absence of the said affidavit, security for costs must be offered in writing to support an appeal under this statute. See Satterwhite v. State, 28 Ala. 65, with authorities cited.

Yours very truly,
A. A. CARMCHAEL,
Attorney General.

April 17, 1936.

Hon. J. M. Lyons, Chairman,
Board of Revenue, Shelby County,
Columbiana, Alabama.

Counties—Not liable for expenses of County Treasurer in making deposits and clipping coupons from bonds deposited in safe deposit boxes.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of April 11, 1936 in which you request my opinion as follows:

> "The Shelby County Board of Revenue has designated and rented a safe deposit box in the First National Bank of Birmingham for the deposit and safe keeping of Bonds belonging to the Sinking Fund. Is the County liable for the expense of the County Treasurer in making deposits and clipping coupons from Bonds deposited in the above safe deposit box?"

In reply, I wish to advise that Section 6755(22) of the Code of Alabama of 1923 provides for the deposit or investment of sinking funds as follows:

> "The Court has authority—
>
> "22. To set aside such part of the revenue of the county as may be deemed expedient for the purpose of creating a sinking fund for the payment of bonds or other indebtedness, and to invest such sinking fund in such interest-bearing account, within the state, as said court may deem wise."

I find no authority of law authorizing the payment by the County of the expenses of the County Treasurer in making deposits and clipping coupons

from bonds deposited in a safe deposit box in the Birmingham bank. **The rule** is well settled that before an officer claiming allowances may receive same, he must point out a definite law authorizing them. See Section 7255 of the Code of Alabama of 1923; **Copeland vs. Jefferson County,** 192 Ala. 12, 68 So. 285; **Mobile County vs. Williams,** 180 Ala. 639, 61 So. 963.

No law is to be found providing for the payment of the expenses detailed above. In the absence of such authorization, therefore, the County is not liable for the Tresurer's expenses in making deposits and clipping coupons from bonds deposited in the Birmingham bank.

Yours very truly,
A. A. CARMCHAEL,
Attorney General.

April 18, 1936.

Hon. Elmer L. Vinson,
Tax Collector,
Limestone County,
Athens, Alabama.

Exemptions—Insane persons entitled to $2000 exemption provided by Section 2 (f) of the Revenue Bill of 1935, need not necessarily be "legally declared" insane.

Meaning of "to the extent of $2000," as used in Act held to be $2000 actual value and not assessable value.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I wish to acknowledge receipt of your letter of March 10, 1936 in which you state:

"I would like to call your attention to my letter of January 30, concerning the method by which people are supposed to be declared insane in order to be entitled to receive the $2000.00 exemption from taxation. Do they have to be declared insane by a jury, or is a certificate from the Probate Judge sufficient proof for me to allow this exemption?

"It is not quite clear to me when the law says they are to receive $2000.00 exemption. Does this mean that the $2000.00 is to be deducted from the assessed valuation which is supposed to be sixty per cent of a fair value, or does it mean that the $2000.00 should be deducted from the value of the property before arriving at the taxable value? In other words if an insane person owns property which could be sold for $5000.00 and on which the assessed valuation would be $3000.00 leaving taxes due on $1000.00 or would the $2000.00 be subtracted from $5000.00 leaving $3000.00 and then sixty per cent of this would be $1800.00 which would be taxable. If handled in this way it would simply mean that $1200.00 would be deducted from the taxable value of the property."

Answering your first inquiry, it is my opinion that a person is entitled to the exemption provided by Section 2 (f) of the Revenue Bill of 1935, which provides:

"(f) Property of deaf mutes and insane and blind persons to the extent of $2000,"

without regard to whether such person has been legally declared insane by a jury.

You will note the provision in an Act approved October 7, 1932 (General Acts 1932, page 88) authorizing exemptions to "all persons who have been legally declared insane." This provision is not included in Section 2 (f) of the Revenue Bill of 1935, which is tantamount to a repeal of the necessity of having the insane person legally declared such. All that is now necessary is that there be satisfactory proof of the insanity made to the proper officer, whereupon the question as to the actual sanity of the person claiming the exemption becomes a matter addressed to the assessing officer, and fact of which, he must reasonably be satisfied.

Answering your second inquiry, it is my opinion that "to the extent of $2000.00" means $2000.00 of actual value and not "assessable value," and that under the facts as stated in your inquiry, the $2000.00 should be deducted from the $5000.00 value, leaving a balance of $3000.00, of which 60 per cent or $1800.00 is subject to taxation. See Biennial Report of Attorney General 1930-32, page 976.

I may state, however, that both of your inquiries, are more properly the concern of the tax assessor. The question of taxability vel non as well as the amount due, should be determined before the abstract reaches the tax collector.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 20, 1936.

Hon. Sam A. Williams,
Secretary, State Board of Pharmacy,
Pike County,
Troy, Alabama.

Pharmacy—

1. State Board of Pharmacy required to enforce Barbituric Act, approved August 8, 1935.

2. State Board of Pharmacy not granted authority to promulgate rules under new Act.

3. State funds not available for use of Board except as specifically provided.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of February 6, 1936, in which you request my opinion as follows:

"Will you please give me as Secretary of the Board of Pharmacy your opinion as to the acts of the legislature as per questions asked below:

"The last session of the legislature passed a bill known as the Barbituric Act, copy of which I am enclosing. The Act does not state who is charged with its enforcement nor does it provide any rules by which it can or may be enforced.

"Does Section 5 of the Act to regulate the practice of pharmacy S. 136 place the enforcement upon the Board of Pharmacy, and does this section grant to the Board the authority to adopt such rules as in its judgment may be necessary to properly enforce the act, said rules not to conflict with the provisions of the Act?

"In case the Board should not have the necessary funds to cover the cost of its enforcement is there any source from which the funds may be obtained?"

Section 5 of an Act approved July 1, 1931, (P. 377 of Acts of Legislature of 1931) to which you refer, reads as follows:

"Board charged with enforcement of all laws pertaining to pharmacy:

It shall be the duty of the Board of Pharmacy to enforce the provisions of all laws of the State which pertain to the practice of pharmacy, the manufacture, production, sale or distribution of drugs, chemicals and poisons, and to their standard of strength and purity."

I am of the opinion that the above cited Section places the enforcement of the Act approved August 8, 1935 on the State Board of Pharmacy.

The Pharmacy Act of July 1, 1931, provides that the State Board of Pharmacy shall "have power to fix standards and requirements for pharmaceutical registration, except as otherwise specified." While this authority is granted to the Board, I am of the opinion that it would not extend to the making of rules and regulations in reference to the Act passed August 8, 1935.

The Pharmacy Act of July 1, 1931 creates a fund from which the expenses of the Board shall be paid. I am of the opinion that there is no other source from which funds may be obtained from the State for the work of the Board.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 20, 1936.

Hon. Joe C. McCorquodale,
County Commissioner,
Clarke County,
Salitpa, Alabama.

State Legislature has power to legislate on public bodies of water subject to paramount rights.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of March 10, 1936, in which you request my opinion as follows:

"I am writing to inquire your official opinion as to the constitutionality and effect of Act No. 72, approved March 18, 1933, General Acts of Alabama, 1933, Page 67, as applied to the following situation:

"I own a substantial portion of a body of water in Clarke County, Alabama, known as Horse Shoe Lake; as the name implies, this lake is in

the shape of a horse shoe and I own all the land bordering on the lake in the inside of the horse shoe and part of the way around each end of the horse shoe. The outside curve is owned by other parties. My family and myself have had possession of this portion of the lake for fifty odd years and we have paid taxes on it continuously for that length of time; the lake contains a considerable quantity of game fish.

"I wish to inquire whether under the terms of the Act above mentioned this lake has now become public water. Is it possible that such an Act can be constitutional, and can have the effect of taking my property, without compensation, and converting it into public property?"

Before the passage of the act about which you inquire, this Department in an opinion addressed to Hon. G. H. Howard, Judge of Probate of Elmore County, under date of April 1, 1932, had defined the term "public waters," approving the general rule that the term "public waters" has "been greatly extended so as to include all waters which are actually navigable."

"Navigability is to be determined by the condition of the body of water and all the surrounding circumstances. It is immaterial that there is no current, as where the water is a bayou of a navigable river. Waters do not lose their character of navigability by the assertion of a claim of private ownership." 45 C. J., p. 408.

In a North Caroline case (State v. Twiford, 136 N. C. 603, 48 S. E. 586) the court in commenting on the question of the ownership of the surrounding territory or adjecent land as affecting the question of whether or not the water was a public body, made the following statement:

"It would be a serious detriment to the public if water, capable of usefulness as here, can be made private property by buying up the adjacent land. The control of such water belongs to the public and is not appurtenant to the ownership of the shore."

The right of the State to legislate on waters usually arises in cases dealing with public bodies of water. The general rule in this connection is stated in Corpus Juris (45 C. J. at page 421) as follows:

"Subject to the paramount authority of congress over commerce and the navigable waters of the United States, and to private property rights, the State has full authority to legislate concerning the use of navigable streams which are within the territorial limits of the State, without regard to whether or not they connect with waters outside such limits."

I am of the opinion, therefore, that the legislature of Alabama has authority to pass acts relating to the public waters of the State, and that in the present instance, the application of such a law would depend upon the facts.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 21, 1936.

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
Birmingham, Alabama.
Tax Collector—Jefferson County.

Section 161-A of the Revenue Act of 1935 fixing the compensation of tax collections held not applicable to counties where the tax collector is paid on a fixed salary basis.

Opinion by Assistant Attorney General Moore.

Dear Sir:

Several months ago you wrote me as follows:

"Is the salary of the Tax Collector of Jefferson County governed by and paid under Section 161-A of the Revenue Act of 1935, or is such salary governed, controlled and paid under the provisions of an Act entitled 'An Act to fix the compensation or salaries of Tax Assessors and Tax Collectors in counties of 200,000 inhabitants, or more, according to the last or any subsequent Federal census; and to require such officers to pay in to the county treasury of such county, or counties, all fees, commissions, costs or other emoluments which are now allowed by law?' Approved September 7, 1923, (Acts 1923, p. 248)."

Section 161-A of the Revenue Act of 1935 to which you refer provides:

"The fees, compensation and earnings of the Tax Collector allowed under the revenue laws of the State, shall not, together with all other fees, compensation, allowances and earnings to them, exceed Five Thousand Four Hundred Dollars ($5400.00) net annually. Provided, that after the term of office beginning with the first of October, 1935, expires, then the fees, compensation and earnings of the Tax Collector allowed under the revenue laws of the State, shall not together with all other fees, compensations, allowances, and earnings to them, exceed four thousand dollars ($4000.00) net annually, after the payment of the salaries for clerks, typists, stenographers, and other office expense **in the Counties where the Tax Collector is not paid a fixed salary;** and the expenses of the office in such Counties for clerks, typists, stenographers, and other expenses shall not exceed in counties having a population according to the Federal Census as follows:

"10 to 30 Thousand—$100.00 per month.
30 to 40 Thousand—$125.00 per month.
40 to 50 Thousand—$150.00 per month.
50 to 65 Thousand—$200 per month.
65 to 85 Thousand—$250.00 per month.
85 to 110 Thousand—$300.00 per month.
110 to 125 Thousand—$800.00 per month.
125 to 500 Thousand—$1,500.00 per month."

Admittedly, the question which you propound is under the language of Section 161-A, a very close one. However, I am of the opinion that the expression "in counties where the Tax Collector is not paid a fixed salary", is, though awkwardly expressed, an evidence of the intent to except from the provisions of Section 161-A those counties in which Tax Collectors, under authority of special constitutional amendments, are paid fixed salaries.

As a general rule, a special law is not repealed by a general law in the absence of a clear intent so to do. Shepperd v. Clements, 224 Ala. 1. I am unable to find any reason for the insertion of the phrase "in counties where the Tax Collector is not paid a fixed salary", except for the purpose of making an exception to the general rule. If it had been the purpose to have the provision of 161-A to apply with universality, there would be no occasion for this expression.

It is, therefore, my judgment that this expression read along with the general presumption that a specific law, directed to a specific subject, is not

repealed by a general law, was intended to except Jefferson and other counties in which the Tax Collector is paid a fixed salary from the operation of Section 161-A.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 21, 1936.

Hon. G. W. Brock, President,
State Teachers College,
Livingston, Alabama.

Under Sections 474-480 of the school code, State Normal Schools are under the control of the State Board of Education and by Section 58 of the School Code, the State Board of Education is the instrumentality vested with the power and authority to borrow money for the use and benefit of the institutions under its control, and under these provisions a note of a State Normal School not executed by or under the direction and authority of the State Board of Education is not a charge upon the public funds appropriated for such schools.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of February 24, 1936, as follows:

"More than ten years ago our State Teachers College borrowed some money from Mr. L. B. Spratt. We gave our school note at 8 per cent. Some time later we secured another loan at 7 per cent.

"In 1929 when plans were made for a building program the State Board of Education by resolution authorized school loans at 6 per cent.

"In 1932 Governor Miller requested all loans be refunded and that notes signed by himself and the building committee should be given to creditors and the old notes should be taken up. These new notes bore 6 per cent interest.

"As I have said Mr. Spratt held two notes, one at 8 per cent and one at 7 per cent and in refunding these notes he would not accept a 6 per cent note and bear the loss of 2 per cent on one note and 1 per cent on the other. We consolidated his two notes into one note paying 6 per cent and gave a school note for the interest which he would lose.

"At the time we borrowed the money from him the loan was authorized by the State Board of Education and no objection was raised about the 8 per cent interest. All these 6 per cent notes were paid off by bonds in 1933 but the interest previous to July 1, 1933 was not paid. By an act of the Legislature an appropriation was made to pay the outstanding interest which had accrued before July 1, 1933. The question is, can the interest note for Mr. Spratt's interest be paid from this appropriation? Please give me your opinion."

From my investigation, it appears that on December 27, 1923, the State Normal School gave its note for $1,000.00 payable one year after date to Mr. L. B. Spratt and that on April 27, 1929 the State Normal School again gave

its note for $5,000.00, payable in two years after date to Mr. L. B. Spratt, a total of $6,000.00. On April 11, 1929, the State Board of Education appears to have adopted the following resolution:

"The State Board of Education authorizes the borrowing for the normal schools amounts not exceeding $100,000 for any one institution at any given time for the purpose of erecting and equipping buildings, plans and specifications for which have already been submitted by the architects and approved by the Board. The State Board of Education further authorizes the presidents of the institutions, the State Superintendent of Education as Executive Officer of the Board, and the Governor as Chairman to execute for the Board notes for the loans which may be negotiated to bear interest at not exceeding six per cent (6%), the proceeds of such notes to be used exclusively to meet the cost of the building projects and are to be paid out from time to time as construction of the buildings progresses. The interest on said notes shall be paid out of the current funds of the State Normal School at stated periods agreed upon. For the payment of such notes which may be made by the State Board of Education, the Board pledges all appropriations for buildings and equipment which may become available under the present laws. In addition the Board pledges the current annual appropriations to the normal schools now provided by law, as a guarantee for the payment of any obligations incurred under this resolution." (Pages 237-238 minutes of State Board of Administration.)

Thereafter this resolution appears to have been amended in respects not here material on August 30, 1929.

It will be observed that the note dated April 27, 1929 for $5,000.00 was executed after this resolution authorizing loans at the rate of 6 per cent per annum and thereafter presumptively the note should have borne interest at 6 per cent rather than at 8 per cent.

From my investigation, it further appears that on January 1, 1932, interest having been paid Mr. Spratt to that date, these notes were refunded by delivering to Mr. Spratt a promissory note in the sum of $6,000.00 payable to his order at McMillan & Company, bankers, Livingston, Alabama, and signed by B. M. Miller, Governor and Chairman of the State Board of Education, A. H. Harmon, State Superintendent of Education and Executive Secretary of the State Board of Education and by G. W. Brock, President of the Livingston State Teachers College, being the appropriate officers authorized to execute such notes by the State Board of Education in its resolution of April 11, 1929. I am further advised that this note was paid by the delivery to Mr. Spratt of $6,000.00 State of Alabama Warrant Refunding Bonds on July 1, 1933, and that he has been paid the interest accrued on the note up to that time.

It further appears that on January 1, 1932, a note in the sum of $110.00 in the name of the State Teachers College signed by G. W. Brock as President, was delivered to Mr. Spratt, I infer that this note was given to Mr. Spratt on account of his reluctance perhaps to accept the $6,000.00 note bearing 6 per cent interest and executed by the appropriately authorized officers of the State Board of Education. Whatever may have been the praiseworthy inducements leading up to the execution of the $110.00 note, it does not appear to have been executed by the State Board of Education nor by the officers authorized by it by appropriate resolution to execute notes on behalf of itself and the State Normal Colleges. It is, therefore, my opinion

that the $110.00 note to which you refer is not such an obligation as is legally payable from the public funds appropriated and available for the use of the Livingston State Teachers College.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 21, 1936.

Hon. D. B. Borden,
Judge of Probate,
Hale County,
Greensboro, Alabama.

Tax Sales—When land is sold for taxes and bought in by another than the State, and the purchaser quitclaims to original owner, the quitclaim deed conveys the property to the original owner as if the owner had redeemed the property under Section 3111 of the 1923 Code of Alabama, with the exception of the taxes which have accrued since the tax sale.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 11, 1936, in which you state:

"Mr. H. A. Taylor of Greensboro bought a piece of property at a tax sale, on which the exemption rights will expire in December of this year. The party who lost the property at the tax sale has gotten a quitclaim deed from Mr. Taylor, instead of redeeming from the Probate Judge, and without paying the current tax and also making a deposit for the 1936 tax, with the tax collector.

"Please advise if this will convey the property to the original owner, the same as if he had redeemed through the regular channels, as provided in the Tax Code."

In my opinion your question should be answered in the affirmative, with the exception that the original owner by getting a quitclaim deed from the purchaser, takes the property subject to the taxes that have accrued since the tax sale. If the original owner had redeemed the property as provided by Section 3111 of the 1923 Code of Alabama, these taxes would have been paid, or the amount of the taxes not yet due would have been deposited with the tax collector.

In answering your request, I am assuming that the tax certificate has been assigned to the original owner, or that the quitclaim deed was recorded by the original owner before any assignment of the tax certificate.

The original owner by obtaining a quitclaim deed from the purchaser at the tax sale, has acquired all rights or interests in the property lost by the tax sale.

"Title to real property may be as effectually conveyed or transferred by a quitclaim deed, as by any other form of conveyance. It conveys only whatever title or estate the grantor may have had in the land at the time it is given."

Moelle v. Sherwood, 148 U. S. 21, 13 S. Ct. 426, 37 L. Ed. 350;
Van Rensselaer v. Kerney, 11 How. 297, 13 L. Ed. 703.
See also 18 C. J. 313.

The property should have been assessed to the purchaser at the tax sale, and, of course, the purchaser is liable for the taxes that have accrued since the sale, and if the taxes are not paid when due the property should be re-sold for the payment of the delinquent taxes.

Biennial Report of Attorney General, 1932-1934, p. 125.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 21, 1936.

Hon. G. B. Smith,
Tax Assessor,
Elmore County,
Wetumpka, Alabama.

Tax Assessors. Book of Assessments—

(1) Tax Assessors, except where required by local laws, not required to make book of assessments.

(2) Opinion to H. S. Long, Pres. State Tax Commission, dated March 28, 1936, withdrawn.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"I am in receipt of your ruling of March 28, 1936 to the State Tax Commission, in which you ruled that the Book of Assessments as provided for in Section 55, H. B. 324, approved July 10, 1935, must be prepared by the Tax Assessors of the several counties.

"In view of the fact that the Acts of 1932, Act No. 83, approved October 11, 1932 (General Acts 1932, page 93) relieved the assessors from making such books, and also taking into consideration the expense counties would incur by reason of expensive books, which I estimate in my county to be not less than $450.00, it appears to me that the making of such books would not only be of no value as a record in the Assessors' offices, but would also place an additional unnecessary expense on the several counties.

"Please further investigate this matter, and if at all possible, I trust that the former opinion can be reconsidered, and I respectfully so request."

Since receiving your letter I have carefully reviewed the opinion to which you refer and while the meaning of the Statute is not clear, I am persuaded that the conclusion arrived at in the former opinion is not correct.

I will review briefly the recent history of Section 55 of the Revenue Act of 1935.

As Section 42 of the 1923 Revenue Act (1929 Comp. Section 167) it required the book of assessments to be made in all counties, except those in which the assessment was in excess of $100,000,000.00 (Jefferson County), in which the binding together in permanent form of the original assessment lists was provided.

Immediately the legislature by a series of local acts embarked upon the policy of making the Jefferson County method applicable in other counties.

In 1923, by local statutes, the tax assessors of three counties were relieved of making the book of assessments, and authorized to bind as a permanent record the original assessment sheets. In 1927, the Tax Assessors of seven other counties were likewise relieved, and in 1931, eleven counties, others were added to the list.

Probably realizing the hodge podge that has been created the Legislature in 1932 by General Act (Acts 1932, p. 93) relieved the assessors of all counties of this duty, except where provided **otherwise by local law.**

At the time of the adoption of this statute I have not found a local law requiring such book to be made, to have been in existence.

However, by Local Acts of 1933, p. 7, the Tax Assessor of Limestone County is required to make such book.

Thus in 1935 the state of the law, as found by my research was that tax assessors were relieved of making the book of assessments in all counties except one.

With that predicate, we may take up Section 55 of the 1935 Act.

After stating the book of assessments shall be made it adds this proviso:

> "Provided that in counties where assessors are now allowed by law to use assessment lists in lieu of a book of assessments, the assessor shall not be required to prepare a book of assessment, as provided for in this Section, but in lieu thereof shall be required to arrange in alphabetical order original assessment lists, and cause the same to be permanently bound, and such assessment lists when bound, shall constitute the book of assessments as herein provided, and the certificate of the State Tax Commission, or the agent or assistant thereof provided for in the next section, shall be entered upon each of said bound volumes of assessments. Such assessment lists when bound shall be preserved permanently as a matter of record. In making the tax collectors' abstracts, such abstracts shall be made direct from the assessment lists."

In writing the opinion to H. S. Long, Chairman of the State Tax Commission, I had not discovered the Limestone Act and it seemed to me that the only field of operation for this proviso was to apply it to local acts relieving assessors of this duty.

There is afforded though by the Limestone Act a field of operation which harmonizes with the general policy of the legislature as evidenced by so many acts, different from that given in the former opinion.

I am therefore of the opinion that the phrase "in counties where assessors are now allowed by law to use assessment lists" etc. covers all counties, except those where there is a specific requirement therefor as in Limestone

County. In other words, the 1932 Act relieving assessors in all counties of such duty, except where local laws provide otherwise, was the law at the time of the adoption of the 1935 Act and Section 55 does not change its effect.

I therefore conclude that assessors are not required to make the book of assessments, in any counties except where required to so do by local law, but in lieu may arrange in alphabetical order and permanently bind the original assessment sheets in the manner authorized.

I am further persuaded that this construction effects more closely the legislative intent for the reason that no extra compensation is allowed the assessors for performing this duty as is allowed for the duties required by Sections 58 and 59, and as you suggest the expense to the counties will be heavy.

The opinion to H. S. Long, President, State Tax Commission, dated March 28, 1936, is accordingly overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 22, 1936.

Hon. S. D. Bayer,
Superintendent of Education,
Greene County,
Eutaw, Alabama.

Schools—The calling of elections for levying one mill and three mill taxes is governed by Sections 253 and 261 of the School Code of 1927 respectively. Special district three mill tax election is called upon request of County Board of Education.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 7, 1936, in which you present the following inquiries:

(1). Whether or not Section 253 of Article XII of the School Code of 1927 governs calling an election for levying an additional one mill special county school tax.

(2). Whether or not Section 261 of Article XIII of the School Code of 1927 governs calling an election for levying a special three mill district tax in each of the two school districts in this county; or, what law governs these elections.

(3). In calling an election for levying a special three mill district tax, does the Court of County Commissioners act upon a request from the County Board of Education or upon a petition signed by two hundred or more qualified electors residing in each district. If the latter be true, what is the procedure when less than two hundred qualified electors reside within one of the districts?"

I am of the opinion that your first two inquiries should be answered in the affirmative.

Sections 253 and 261 of the School Code of 1927, providing for the calling of one mill and three mill school taxes respectively, as far as I have been able to ascertain, are still in full force and effect. However, in this connection I wish to call your attention to Act No. 94, S. 65, approved April 6, 1936. Said Act deals in part with school tax elections, but does not affect Sections 253 and 261 of the School Code of 1927, supra.

In answer to your third inquiry, it is my opinion that in the case of special three mill district taxes, the Court of County Commissioners or other governing body acts upon the request of the County Board of Education in respect to calling the election.

Section 261 of the School Code of 1927, provides as follows:

"261. Calling Election For Levy Three Mill Tax.—Upon a petition signed by two hundred or more qaulified electors of any County to the Court of County Commissioners or other governing body, said Court of County Commissioners or other governing body shall order an election to be held at the time specified in said petition to determine whether or not a special tax shall be levied for public school purposes within said County, and upon request of the County Board of Education to the Court of County Commissioners or other governing body, said Court shall order an election to be held at the time requested by the said Board of Education to determine whether or not a special tax shall be levied for public school purposes within any school district in the County under the control of such Board; and upon the request of any City Board of Education to the Court of County Commissioners or other governing body said Court shall order an election to be held at the time requested by said Board of Education to determine whether or not a special tax shall be levied for public school purposes within said City."

The above section provides for the calling of elections for the levying of three kinds of three mill taxes, viz: county wide, districts under the control of the County Board of Education, and cities. In the case of county wide three mill tax elections, a petition signed by two hundred and fifty qualified electors of the county is necessary before the Court of County Commissioners or other governing body can call the elections. In the other two cases the request of the County Board of Education or the City Board of Education, as the case may be, is sufficient. When such requests are made the elections are called by the Court of County Commissioners or other governing body in compliance with the requests.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936.

Hon. Matt A. Boykin,
Judge of Probate, Mobile County,
Mobile, Alabama.

Elections—Acts 1926-27, page 276 held not to authorize the Judge of Probate to reinstate a name on the qualified list of voters when said name has been stricken from the said list by the Board of Registrars.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 16, 1936, in which you request my opinion as follows:

"On the 9th of April, G. B. Dunning, as Attorney for W. T. Snyder filed a petition in this office relative to reinstating Mr. Snyder after his name being stricken from the list of qualified electors by the Board of Registrars on May 28, 1935.

"On presenting this petition we took the matter up with Mr. Dunning referring him to an attorney general ruling of April 25th, 1932, by Thomas E. Knight, Jr., Attorney General, to Hon. A. H. Glasgow, Judge of Probate, Heflin, Alabama, which states the Judge of Probate is without power to reinstate a name on the qualified list which has been stricken from said list by the Board of Registrars.

"Mr. Dunning seems to think that the Judge of Probate is authorized to reinstate these names that are stricken by the Board of Registrars, referring us to General Acts of Alabama, regular session of 1927 and special session 1926-27, Page 276. Quote: If within such ten days any voter shall reasonably satisfy said judge of probate by proper proof that any name should be added to such list, his or her name shall be added thereto.

"We are enclosing this petition and would like for you to let us know as soon as possible, if we have authority to reinstate this particular party.

In reply, I wish to advise that in my opinion the Acts of 1926-27, page 276, does not authorize the Judge of Probate to reinstate a name on the qualified list of voters, when said name has been stricken from the said list by the Board of Registrars.

You quote an extract from the Acts of 1926-27, which if read in connection with the two preceding sentences is as follows:

"The Judge of Probate shall after the first day of February, 1922, and of each year thereafter, compare such official list of registered electors with the poll tax lists which have been furnished him by the tax collector, and shall ascertain from such comparison the names of such persons on the official list of registered electors who have failed to pay any poll tax which they are legally due, and by such comparison and other available information, said Judge of Probate shall make correct alphabetical lists of all the qualified electors registered by precincts and of districts of precincts where precincts have been divided or subdivided, and who have paid all poll tax due. Said lists so made up shall be published by him in some newspaper with a general circulation in said county on or before the 15th day of April, 1922, and of each two years thereafter, and together with said lists there shall also be published a certificate that said list constitutes the correct list of all qualified electors who will be entitled to vote in any elections held in said county from the time of such publication until the first day of May of the next succeeding year, and also a notice that any **voter duly registered whose name has been inadvertently or through mistake** ommitted therefrom and who has paid all poll taxes due and who is legally entitled to vote

shall have ten days from said publication to have his or her name entered upon said list of qualified voters. If within such ten days any voter shall reasonably satisfy said judge of probate by proper proof that any name should be added to such list, his or her name shall be added thereto." (Emphasis supplied).

Considering the above quotation as a whole, the legislative intent becomes clear. The Judge of Probate has authority to reinstate any name which had been omitted from the published list, here provided for, only when such name is omitted through **inadvertence** or **error on his part.** No authority to reinstate a name stricken by the Board of Registrars is here given.

The opinion of the Attorney General to Hon. A. H. Glasgow, Judge of Probate, Helfin, Cleburne County, Alabama, under date of April 25, 1932, in my judgment is a correct interpretation of the law.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936.

Hon. Forrest Castleberry,
Member, House of Representatives,
Capitol.

Act No. 110, S. B. 16, approved April 14, 1936, (Local Act 1936, Extra Session) is unconstitutional and void, being in violation of Section 105 of the 1901 Constitution of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 14, 1936, in which you request my opinion as follows:

"Please advise me if Senate Bill No. 16, approved April 14, 1936 (Special Session) is constitutional."

In my opinion Act No. 110, S. B. 16, approved April 14, 1936 (Local Act 1936, Extra Session) is unconstitutional and void in that it violates Section 105 of the 1901 Constitution of Alabama, which is as follows:

"105. No special, private, or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this State; and the courts, and not the legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be given by any court; nor shall the legislature indirectly enact any such special, private, or local law by the partial repeal of a general law."

Act No. 110, which is a Local Act, provides Twenty-Five Dollars per month per county, to be paid to the Circuit Judge in lieu of all expenses now allowed by law to said Judge while in his own circuit, and Act No. 296, S. B. 25, approved November 5, 1932 (General Acts 1932, Extra Session, p. 301), provides that Circuit Judges of more than one county shall each receive the sum of One Hundred Dollars per annum for each county of their circuit over and above one, said allowance to be for their reasonable expenses, while in

attendance on court outside of their home county. Act No. 110 increases the expense allowance from One Hundred Dollars per year per county to Three Hundred Dollars per year per county.

I wish to call your attention to the case of Acuff, County Treasurer, v. Weaver, 86 So. 167, 17 Ala. App. 532, (containing responses by the Supreme Court of Alabama to inquiry by the Court of Appeals). In this case the compensation of the Judge of the County Court of Shelby County, under the provisions of the general law, was Four Hundred and Fifty Dollars per annum while under the Local Act the compensation was fixed at Twelve Hundred Dollars per annum. The Court held that the subject matter of the two Acts was the same, and the question of compensation having been provided for by the general law, the Local Act contravened Section 105 of the Constitution and was void.

In the case of Evans v. Long, 149 So. 837, 227 Ala. 335, the Supreme Court of Alabama held that the Local Act raising the salary of the chief deputy sheriff of Walker County violated Section 105 of the Constitution, as the general law fixed the compensation for the chief deputy sheriff.

See also the following cases in which Section 105 of the Constitution is construed:

State v. Bowles, 116, So. 662, 217 Ala. 458;
Dunn v. Dean, 71 So. 709, 196 Ala. 486;
City of Montgomery v. Reese, 45 So. 116, 149 Ala. 190.

The expense allowances for Circuit Judges are specifically provided for by general legislation and, therefore, in my opinion, the Local Act which increases the allowances for the Judge of a particular Judicial Circuit is unconstitutional and void in that it violates Section 105 of the 1901 Constitution of Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936.

Hon. D. B. Borden,
Judge of Probate,
Hale County,
Greensboro, Alabama.

Co-tenant cannot redeem property where attempted tax sale has resulted in payment of taxes inuring to the benefit of such co-tenant.

Opinion by Assistant Attorney General Knabe

Dear Sir:

I am in receipt of your letter of March 19th, 1936 in which you request my opinion as follows:

"Please give me a ruling on the following:

"In September 1932 the property assessed to the estate of Mrs. M. F. Huffman was sold for taxes and bought in at tax sale by L. M. Griffin. In January 1933 this property was redeemed by S. P. May who owned an interest.

"This property was still assessed to the Huffman estate and in January 1936 was again sold at tax sale and bought in by J. M. May who has an interest.

"Now, J C. Huffman who owns a 1/5 interest wants to redeem this property and I want to know if he can redeem same."

I assume that J. C. Huffman is a tenant in common and that the interest which he owns is a one-fifth undivided interest. I assume further that the redemption by S. P. May occurred **before** the expiration of the statutory redemption period. If these assumptions are correct, I am of the opinion that no redemption is necessary in this case, and that the attempted purchase by J. M. May was in effect not a purchase but a payment of taxes.

The redemption of the property by S. P. May inured to the benefit of all the tenants in common. This rule has been frequently stated in Alabama and is found in the case of Winsett v. Winsett, 203 Ala. 83 So. 117, in the following words:

"A redemption of the lands from mortgages and tax sales * * * will inure to the benefit of all co-tenants therein."

This is followed by the citation of numerous Alabama authorities.

At the time, therefore, that Mr. J. M. May attempted to purchase the property at the tax sale, the property apparently belonged to the estate and to each of the tenants in common.

Where one co-tenant attempts to purchase at a tax sale, he cannot improve his title. The general law is stated thus by Corpus Juris:

"(Par. 96) b. Right to Extinguish or Purchase, and Effect Thereof—(1) In General. Although a tenant in common may redeem for himself and for his co-tenants the common land sold for taxes, except as it may be otherwise provided by statute, the general rule precluding the right of a tenant in common to acquire a title to the common property for his own benefit apply where one tenant in common purchases at a tax sale or acquires an outstanding tax title. A tenant in common cannot add to or strengthen his own title by purchasing at a tax sale or by purchasing from a stranger who purchased at a sale. The purchase of the outstanding tax title for the entire property by one co-tenant operates as a payment of the tax and an extinguishment of the tax title, amounting to no more than a redemption until ouster or notice to his co-tenants that his possession is exclusive, and a deed to him as purchaser simply acts as a discharge of the taxes assessed on the land. Such purchase or extinguishment inures to the benefit of all of the tenants in common and the purchasing tenant holds the title or interest acquired in trust for the benefit of his co-tenants; however, a co-tenant seeking to obtain the benefit of the purchase must come with clean hands; he must elect to share in such benefit within a reasonable time and pay his proportionate share of the expense."

62 C. J. 466, Par. 96.

It is interesting to note that much of the law stated in the above quoted Section from Corpus Juris is from Alabama cases.

In the case of Donnor v. Quartermas, 90 Ala., 164, at page 169, the Court stated:

"The relation of tenants in common existed between the parties * * *. Mrs. Donnor was disqualified to acquire any title founded on her own default in neglecting to pay the taxes. The transfer from the State of this outstanding tax title must, therefore, be construed to operate only as a **payment** of the taxes, inuring to the equal benefit of all of the part owners and not as a valid purchase of the interest of her co-owners." (Underscoring ours).

In a prior case, that of Bailey's Administrator v. Campbell, 82 Ala. 342, the Court discusses this general question and then decides that a tenant would be estopped to claim property under a title acquired at a tax sale. The Court said:

"* * *every attempted purchase made by a tenant of tented premises at a tax sale would operate merely as a **payment** of the tax, not as a valid purchase. And the payment of the tax due on lands, prior to their sale for delinquent taxes, even though made under a judgment of the Probate Court, is a good defense to an action of ejectment brought for the lands. No sale can be supported where it is made to appear that no taxes were due at the time of such sale."

I am therefore of the opinion that Mr. Huffman as a co-tenant could not redeem this property.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936.

Hon. W. C. Batson,
Judge of Probate,
Chambers County,
LaFayette, Alabama.

Elections—Liner—Precinct liner allowed same choice of citizenship for voting purposes as is allowed County liner.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 12, 1936, requesting my opinion as follows:

"Will you please advise me if under the law a beat liner is allowed to select his beat as a County liner is.

"In our County we have a good many people who have voted in Five Points beat for a number of years, which is beat five, while as a matter of fact they really live in beat one, but the town of Five Points is in both beats.

"If they are required to vote in beat one they will have to go several miles to the voting precinct. They find it more convenient to vote in Five Points Box. This condition exists in perhaps several of our beats."

In reply, I wish to advise that in my opinion a "beat or precinct liner" may exercise the same choice concerning his place of voting as is allowed to one living on a county line. This choice must be exercised in accordance with the provisions of Sections 367 and 368 of the Code of 1923.

See also Danforth v. Nabors, 120 Ala. 430, 24 So. 891. I further refer you to an opinion of the Attorney General to Hon. J. F. Posey, Judge of Probate, Autauga County, under date of February 27, 1936, copy of which is herewith enclosed.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 25, 1936.

Hon. J. Lee Smith,
Judge of Probate,
Chilton County,
Clanton, Alabama.

Local Act creating office of Road Supervisor not effective in practice until appointment and qualification of supervisor.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I am in receipt of your letter of April 6, requesting my opinion as follows:

"A local bill was introduced and passed at the present session of the Legislature, which bill, in substance, provides for the appointment by the Governor of a Road and Bridge Supervisor for Chilton County, this Supervisor having practically unlimited powers in regard to the roads and bridges of the County and also as to making expenditures for the roads and bridges of the County and as to hiring and firing road hands. I do not have a copy of this Act as passed, but I understand that possibly your office has a copy of this bill. The bill was introduced by C. B. Cox, Representative from Chilton County, and was passed by the Legislature something like thirty days ago.

"This Road Supervisor was appointed by the Governor some few days ago, but he has not qualified yet by making and having approved good and sufficient bond and in fact has not yet begun any performance of his duties. The Commissioners have continued to perform the same duties with regard to roads and bridges that they were performing before this Act was passed.

"Will you, therefore, advise me at your earliest convenience whether or not the Commissioners are legally entitled to draw their mileage and per diem compensation for services actually performed by them until this supervisor qualifies and assumes the duties of said office? In the event you hold that said Commissioners are not entitled to said compensation, will you please advise me unto what period of time, that is, as regards the passage of the Act, the appointment of the supervisor or his qualification and assumption of the duties of the office, will said commissioners be entitled to said compensation?"

I am of the opinion that payments in reference to road work may be made in accordance with the former law, and that the authority of the Commissioners Court remains the same, until the appointment and qualification of a Road Supervisor as provided by House Bill 3 by Cox, approved March 10, 1936, as Governor's No. 3. After such appointment and qualification, the Commissioners Court would have no further authority except under the Act.

Aside from general rules of construction, I call your attention to the wording of the Act. Section 5 provides:

"The duty and authority as to the building, maintenance or repairing of public roads and bridges in Chilton County, Alabama, be and the same is hereby vested in said Road Supervisor - - -."

Section 2 of the Act provides that before entering upon the discharge of his duties, the Road Supervisor shall furnish good and sufficient bond. The machinery, therefore, provided by the Act does not come into existence until the appointment and qualification of the Road Supervisor.

It should be noted that the Act does not provide that it shall become effective **immediately upon its passage**, but that the Governor **shall appoint** immediately upon its passage. Therefore, in practice, the Act could not be effective until the appointment and qualification of a Road Supervisor, and the machinery existing prior to the passage of the Act will remain in operation temporarily.

As soon as the Road Supervisor is appointed and qualifies, Section 9 of the Act, which privides that no fund shall be expended, or liability created in any other manner than is provided by the terms of the Act, becomes effective, and from that date expenditures must be made in accordance with the terms of the Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

April 29, 1936.

Hon. J. R. White, Chairman,
Walker County Board of Revenue,
Jasper, Alabama.

Costs—County Board of Revenue not authorized to pay costs in mandamus proceeding against County Chairman where court taxes costs against defendant individually.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of December 20, 1935, in which you request my opinion as follows:

"We desire an opinion with reference to the payment of cost in the case of J. M. Gray, as Chairman, etc. vs. State Ex Rel L. C. Garrison, et als, decided by the Supreme Court, November 21, 1935, being case 805 from the sixth division. In this connection we make the following statement:

"The original case grew out of the fact that the Walker County Library Board made an appropriation to support the Walker County Library, after which the Walker County Commission made an appropriation of $4500.00 to the said library for which a warrant was issued and approved by a majority of the then Walker County Commission. Under the Local Acts Special Session 1932, page 28, Section 8 thereof, it was made the duty of the Chairman of the Commission to sign all warrants drawn on the County Treasury in payment of legal claims. J. M.

Gray, Chairman of the County Commission, refused to sign or approve this warrant alleging by doing so that it would render the County unable to meet its preferred claims. Thereupon on the 20th day of April, 1935, mandamus proceedings were filed in the Circuit Court of Walker County requiring him as Chairman to sign the said warrant. The suit was filed against him as Chairman of the Walker County Commission. He answered the said petition and a hearing was had thereon in the lower Court and the lower Court made an order requiring him to sign the said warrant. Thereupon he appealed the case to the Supreme Court of Alabama and the court affirmed the lower Court's decision on the date above mentioned.

"We hand you certified copies of minutes of January 2, 1935, January 7, 1935 and January 19, 1935, which contain all of the record proceedings of the County Commission with reference to this proceeding. It will be noted that on January 7, 1935, the County Commission employed an attorney to represent Chairman Gray in this proceeding. The other matters necessary to be considered in this connection are shown by the resolutions.

"The Circuit Court adjudged the cost against J. M. Gray individually. A copy of the said judgment is herewith submitted. A motion was made in the Circuit Court to retax the cost on various grounds but the court refused to retax the cost. As stated heretofore, the case was filed against J. M. Gray as Chairman of the County Commission of Walker County, Alabama. The motion raised the question, among others, that the suit was not against J. M. Gray individually and that it was improper to tax the cost against him individually.

"When the lower Court decided the case against Chairman Gray he thereupon sought approval of the County Commission to appeal the case, but the approval was not granted. Mr. Gray has paid the court cost accruing in the Lower Court both on original trial and for the appeal and now presents a bill therefor to the present Board of Revenue for repayment to him for the cost so paid. There has also accrued on said appeal cost in the Supreme Court in the amount of $14.50.

"Under the facts stated herein we desire to know if the Walker County Board of Revenue would be authorized to repay Mr. Gray for the court cost paid by him. And we also desire to know separately if the Board of Revenue may pay the court cost accrued in the Supreme Court in this proceeding. If there are any other facts you desire to know or if the statements herein made are not clear please advise us.

"On the appeal to the Supreme Court the refusal of the court to retax the cost was not assigned as error. We should like to have an opinion on this at your very earliest convenience."

I am of the opinion that the Board of Revenue would have no authority to pay court costs in the case to which you refer.

In acordance with your statement, the Court taxed the costs against Mr. Gray. Section 7221 of the Code of Alabama, 1923 provides that the costs may be taxed at the discretion of the Court.

Further , it is indicated in several ways that the Legislature intended in a case such as you mention, that the court costs should be paid by the individual. Section 8984 of the Code of 1923, provides for instance, that in

case a proceeding is brought against an officer and that officer dies during the pendency of the proceeding and the succeeding officer shall do the thing for which the action was brought, the costs shall be taxed against the person who has died, or who has vacated the office. Section 8985 makes provision that if one officer in a group is prevented from performing a duty by the refusal of other officers in that group, under certain conditions, he would not "be liable for any part of the costs." These two facts indicate therefore that the Legislature intended under certain circumstances for the individual to be liable for the court costs.

It is interesting to note that in Section 8984, supra, the Legislature has specifically provided that "all questions of costs under this Chapter shall rest in the discretion of the Court."

In further reference to costs, subsection 21 of Section 6755 of the Code, as amended 1927 and 1931, in defining the authority of the County Commissioners Courts, the Legislature provides as follows:

> "To pay out of any funds in the county treasury, all the expenses, including a reasonable attorney's fee, incurred by the County Treasurer, in resisting the payment of any warrant, where said resistance on the part of the county treasurer is **successful.**" (Underscoring ours.)

By specifically providing for the payment of expenses where the action is successful, the Legislature has inferentially prohibited the payment of expenses where the case is unsuccessful on the part of the State official.

In the State of Alabama, a Probate Judge was required to pay the court costs in a mandamus case.—**Hudgins v. State ex rel. A. T. Hicks & Co.,** 145 Ala. 499, 39 So. 717.

In the case of Roberts v. U. S. 13 App. (D. C.) 38 (Aff. 176 U. S. 221, 44 L. Ed 443) it was held that in mandamus proceedings against the Treasurer of the United States in his official capacity, the fact of his being a public officer does not preclude costs being awarded against him personally if he is the unsuccessful party.

The general rule as stated in Corpus Juris, (38 C. J. p. 954, Par. 760), is:

> "The general rule is that public officers are personally liable for costs incurred in mandamus proceedings to compel them to perform duties which they are required by law to perform. In this case, as in the case of judicial officers, it has been argued that it would entail a hardship where an officer refused to act in case of doubt; but in the absense of discretionary power in the statute the rule has always been enforced. Nevertheless, in a number of jurisdictions, especially in those where the court is vested with discretion in the matter of allowing costs, costs will not neecssarily be awarded against a public officer or board, even though cast, and where refusal to perform the act in question was in the exercise of good faith and on reasonable grounds costs will not be awarded against such board or body, although the writ goes against them."

As stated above the question of costs is in the discretion of the Courts of Alabama and if they have been awarded against Mr. Gray individually, I am of the opinion that the County Board of Revenue would have no authority to either repay Mr. Gray for the court costs paid by him or to pay any part of the court costs accruing in the Supreme Court in this proceeding.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 2, 1936.

Dr. J. A. Keller,
State Supt. of Education,
Capitol.

Under Section 3 of Act No. 507 found at page 1092 of the General Acts of Alabama, 1935, the six persons from whom the trustees of a school are designated, are elected or nominated at a mass meeting composed of parents and guardians of children in attendance at a particular school.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of April 21, as follows:

"Reference is made to Section 133 of the School Code of 1927 as amended September 13, 1935. (Section 3, Act 507, S. 424 Chesnut, Page 1092 General Acts 1935) which reads as follows:

" 'Section 3. That section 133 of the Alabama School Code of 1927 be so amended as to read as follows: 133. SCHOOL TRUSTEES: QUALIFICATIONS AND SELECTION.—The county board of education shall appoint for every school in the county from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school; provided, that the term "patrons" as used herein shall be construed to mean the parents and guardians of children in attendance at the school and, whether parents or guardians or not, qualified electors residing in the attendance district of the school.'

"Your attention is directed to the closing proviso supra reading as follows: 'that the term "patrons" as used herein shall be construed to mean the parents and guardians of children in attendance at the school and, whether parents or guardians or not, **qualified electors residing in the attendance district of the school.**'

"Since the law provides no district with definitely defined geographical limits for attendance at each school, but only one or more attendance district for the enforcement of the Compulsory Attendance Law, (See Section 317 School Code of 1927) it is not possible to administer the provision of the law which attempts to include as 'patrons', with the right to vote in mass meetings, 'qaulified electors residing in the attendance district of the school.'

"Please advise me whether as State Superintendent of Education I may direct county boards of education to disregard that provision of Section 133 supra which undertakes to include as 'patrons', with the right to vote in mass meetings, 'qualified electors residing in the attendance district of the school.' "

I have examined Section 133 at page 57 of the School Code of 1927, which section, as amended, appears as Section 3 of Act No. 507, page 1092 of the General Acts of **Alabama of 1935.**

Section 133 of the School Code of 1927 provides:

"133. Trustees, How Selected.—The County Board of Education shall appoint for every school in the County from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the County Board of Education, through the County Superintendent of Education from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school."

Section 3 of Act No. 507, page 1092 of the General Acts of Alabama of 1935 provides:

"Section 3. That section 133 of the Alabama School Code of 1927 be so amended as to read as follows: 133. SCHOOL TRUSTEES: QUALIFICATIONS AND SELECTION.—The county board of education shall appoint for every school in the county from six discreet, competent and reliable persons of mature years nominated by the patrons of the said school, three persons residing near the schoolhouse, and having the respect and confidence of the community, to serve as trustees of the school, to care for the property, to look after the general interests of the school, and to make to the county board of education, through the county superintendent of education, from time to time, report of the progress and needs of the school, and of the will of the people in regard to the school; provided, that the term 'patrons' as used herein shall be construed to mean the parents and guardians of children in attendance at the school and, whether parents or guardians or not, qualified electors residing in the attendance district of the school."

Under Section 3, just quoted, the word "patrons" is defined to mean:

" * * * the parents and guardians of children in attendance at the school and, whether parents or guardians or not, qualified electors residing in the attendance district of the school."

It will be noted that the word "patrons" was not defined in Section 133 of the School Code of 1927. It appears that Section 3 of the Act of 1935 merely amends Section 133 of the School Code of 1927 by adding thereto a definition of the word "patrons."

It will be noted that in the amendment are found the words, "attendance district of the school." The Legislature was evidently laboring under an impression that the school laws of Alabama provide for district of definite boundaries from which the children who attend the school are drawn.

Sections 127, 151 and 317 of the School Code of 1927 refer to compulsory attendance districts, but these three last mentioned sections have to do with the enforecement of the compulsory school attendance laws. I can't conceive that the Legislature intended that all of the qualified electors residing in a compulsory attendance district should be allowed to participate in the election at which the six persons are nominated. Section 133 of the School Code of 1927 sets up a plan whereby six discreet competent and reliable persons are nominated by the patrons of a school and from the six, the county board of education selects three to act as trustees for the school. The definition of patrons in Section 3 of the 1935 Act adds qualified electors residing

in the attendance district of the school. If the new part added to Section 3 is construed literally, it would mean that all of the qualified electors in a compulsory attendance district would be allowed to participate in the election of the six persons from whom the three trustees are later chosen. As a matter of fact, the words, "attendance districts" are not clear in meaning. The only attendance districts known to the school laws of this State are the compulsory attendance districts mentioned in the sections referred to hereinabove. There are no geographical boundaries of a district from which a certain school draws its pupils. I am sure the Legislature did not intend that qualified electors residing in compulsory attendance districts should be allowed to participate in the selection or election of the six persons mentioned in both Section 133 of the School Code of 1927 and Section 3 of the Act of 1935. As a matter of fact, there are a large number of counties in Alabama which have only two attendance districts and there are still other counties that have only one attendance district. If a literal interpretation is given the words used by the Legislature in the amendment, and if we assume that the attendance districts referred to are compulsory attendance districts, we would have the following situation: One of the schools decides to select six persons from whom the trustees are later designated. All of the qualified electors in compulsory attendance district A would participate in the election of the six persons. I have in mind a county in Alabama which has only one compulsory attendance district. There are as many as twenty-five different schools located in this attendance district. One of the schools in that district in that particular county decides to select the six persons from whom the three trustees are designated. If the amendment in Section 3 were construed literally, all of the qualified electors in that attendance district would participate in the selection of these six persons. This would mean that at least half of the voters in this particular county would participate in such a mass meeting. Indeed, a group of qualified electors residing many miles away from the school, if they so chose, could entirely defeat the will of the parents and guardians who actually have children in the school for which the trustees are to be selected. It is perfectly conceivable that if the amendment is given a literal interpretation, the parents and guardians of children attending a certain school would have very little voice in the selection of the trustees who are to represent the school. The qualified electors in any of the compulsory attendance school districts in Alabama, if they should gather in sufficient force for the purpose of assisting in the selection of these six persons, could defeat the will and desire of the parents and guardians who have children in a particular school.

Under the school laws of the State of Alabama, the Superintendent of Education and the County Board of Education decide the location of schools. A school has no well defined district from which the children are drawn. There is no such thing in Alabama as a well defined area from which a certain school draws its pupils. The author of the 1935 Act evidently proceeded on the assumption that under the school laws of this State schools draw their pupils from a certain well defined section, the boundaries of which are well known. Such is not the case, for obvious reasons: A certain school may draw or take care of ten pupils residing eleven miles northeast of the school and three pupils residing one-half mile southwest of the school. Moreover, there are different types of schools and the academic status of the pupil would determine the school which he or she would attend.

It is my judgment that the Legislature intended to say this: That the six persons from which the trustees are later designated are selected at a

mass meeting composed of the parents and guardians of children who attend a particular school. It would not be difficult to include the qualified electors in a certain area surrounding the school if the children attending the school were drawn from any particular, well defined area, but such is not the case. The Legislature must not be convicted of doing a nonsensical and perfectly ridiculous thing. I therefore, do not believe that the Legislature intended that the qualified electors in a compulsory attendance district should be allowed to participate in the selection of the six persons from whom the three trustees are selected.

It is my judgment that you may proceed to advise the County Superintendents of Education and the County Boards of Education that the six persons are selected at a mass meeting participated in by the parents and guardians of the children who attend a particular school. This is a just, fair and reasonable construction of the amended section and it is my judgment that this is what the Legislature intended.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Theo Hurt, Clerk,
Circuit Court of Perry County,
Marion, Alabama.

Costs—Execution when judgment is for defendant.

Where a suit is brought against the defendant for damages and the verdict is for the defendant for the cost, Section 7805, Code of Alabama, 1923, does not apply to the defendant.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of March 11, 1936, in which you request my opinion as follows:

"A brings suit against B for damages. The jury brings in a verdict for the defendant B.

"The Clerk issues execution against the Plaintiff for the costs of this suit, which is returned 'No property'.

"As I understand it, I am at my rows end. Please advise me if I am correct, or can I issue execution against the defendant B for the cost incurred by him.

"I am aware of the fact that when the plaintiff recovers judgment and execution is returned 'No property' against the defendant, I can go on the plaintiff for the costs incurred by him."

Under the facts stated by you, I know of no way you can collect this cost if you cannot make it out of the plaintiff. Section 7805, Code of Alabama, 1923, does not apply, as it is applicable only to the plaintiff and is as follows:

"When against plaintiff for his costs.—When execution against the defendant is returned 'no property found' execution may issue against

the plaintiff, in the name of the clerk or the register of the court, for all the costs created by him in obtaining his judgment."

Shackleford v. State, 204 Ala. 362.
Biennial Report Attorney General 1922-24, p. 84.

I might say that this action being in tort (which I am presuming) and the plaintiff having lost in his action he has no exemption for cost. **Northern v. Hanner**, 121 Ala. 587.

Sections 7805 and 7263 both specifically authorize the issuance of execution against the plaintiff for the costs created by him, when execution issued against the defendant is returned "No property found".

Where, though as in your case there was judgment against the plaintiff for costs and a return of execution issued against him "No property found", I do not find any specific authority to issue execution against the defendant for that part of the costs incurred by him or for any portion. The definite provision that execution for the costs incurred by the plainiff can be issued against him and the absence of a similar provision applying to the defendant, shows, in my opinion, a legislative intent that execution cannot be issued against the defendant in such cases.

As to whether you are at your "row's end" as you suggest is another question. I call to your attention the following cases:

South & N. R.R. Co. v. Bradley, 84 Ala. 469;
Danforth v. McClellan, 72 So. 104.
Biennial Report of Attorney General 1922-24, p. 132.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Josh Stanford, Sheriff,
Choctaw County,
Butler, Alabama.

Fees allowed sheriff for attendance upon the various terms of Court —Circuit, Probate and County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 24, 1936, in which you request my opinion as follows:

"I would thank you to give me an opinion on the following matters:

1. As sheriff of Choctaw County, what am I entitled to for attending special terms of the Circuit Court where a jury is in attendance?

2. What am I entitled to for attending regular terms of the Circuit Court where jury is attending?

3. What am I entitled to for attending Probate Court where a jury is not attending?

4. What am I entitled to for attending terms of the County Court?

5. What am I entitled to for attending non-jury terms of the Circuit Court?

Answering your first inquiry, I call your attention to Section 3741 of the Code of Alabama, 1923, where it says: "For attendance each day on such court, to be paid by the County, $2.00." Of course, this has reference to regular and special terms of the Circuit Court or Court of like jurisdiction for the trial of capital or **other criminal** cases.

The paragraph just preceding the one quoted above and the one quoted must be construed in pari materia to get at the true intent of the statute or what is referred to in the paragraph, supra.

Opinions of Attorney General, Office Edition, Book 4-A, p. 168.

Therefore, your fee for attending special terms of the Circuit Court for the trial of criminal cases where a jury is in attendance is $2.00 per day.

Answering your second inquiry I call your attention to Section 7287, Code of Alabama, 1923, where it says:

"Attendance upon the Probate Court when a jury is in attendance or upon the Circuit Court where a jury is in attendance, each day to be paid out of the County Treasury, $3.00."

Therefore, your fee for this service is $3.00 for each day's attendance. This refers to civil terms.

Biennial Report of Attorney General 1920-22, p. 445;
Opinions of the Attorney General, Office Edition, Book 3-A, p. 7.

Answering your third inquiry, I find no fee provided for attendance upon the Probate Court where there is no jury in attendance.

Answering your fourth inquiry, I call your attention to Section 3758, Code of Alabama, 1923, where it says:

"For each day's attendance by the sheriff upon such court, $2.00."

This appears under the title "fees in the county court."

Opinions of the Attorney General, Office Edition, Book 3-A, p. 188.

Answering your fifth inquiry, I find no authority of law for paying the sheriff for attendance on a non jury term of the Circuit Court.

Tolbert v. Hale County, 131 Ala. 143;
Opinions of the Attorney General, Office Edition, Book 6-A, page 117.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Montrose B. Herzfeld,
County Commissioner,
Mobile, Alabama.

Minutes—Board of Revenue and Road Commissioners of Mobile County has authority to prescribe, by enclosed resolution, what the minutes of the Board shall consist of.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 15, 1936, which is as follows:

"I am enclosing copy of resolution which I offered at the last meeting of the Board of Revenue and Road Commissioners, to be adopted as a governing principle of the Mobile County Board of Revenue and Road Commissioners.

"It is the present practice to include in the written minutes of the Board, the general discussion of matters, pro and con, hence our minutes are of such length that it takes some time an hour and longer to read these minutes at a subsequent meeting.

"The President of the Board, questioned the legality of this resolution therefore I withdrew it pending your opinion as to its legality. It is not my intention to exclude any action of the Board on any question, but it is my idea to exclude any general discussion of matters, or remarks made that are not pertinent to the question.

"I would appreciate your early reply to this request, as I want to submit this resolution at the next meeting if possible."

A copy of the resolution referred to in your letter is as follows:

"BE IT RESOLVED, by this Board that the following be adopted as a permanent rule of the Board, to become effective at the next meeting after its adoption:

" 'The minutes of this Board shall consist of, and the stenographer shall note, only the actions of the Board and not discussion or other matters leading up to any action of the Board. Each member may at any time present a written statement of his position on any matter which written statement shall upon request be incorporated in the minutes of the meeting at which presented'."

In my opinion the Board of Revenue and Road Commissioners of Mobile County has authority to prescribe, by the enclosed resolution, what the minutes of the Board shall consist of.

I wish to call your attention to a part of Act No. 209, H. B. 174, approved February 1, 1879, (General Acts 1878-1879, p. 238) which is as follows:

"Sec. 2. BE IT FURTHER ENACTED, that hereafter the board of revenue commissioners of Mobile County, shall be known as the board of revenue and road commissioners, and that the said board do and perform all the duties in reference to the roads, bridges and ferries of Mobile County that are by law required to be performed by the courts of county commissioners of the several counties in this State: * * * "

In the case of Mobile County v. Maddox, 195 Ala. p. 336, 70 So. p. 259, the Supreme Court of Alabama held that the Board of Revenue of Mobile County, correspond in nature and functions to courts of county commissioners in other counties in this State, and was a court of record.

The Court of Appeals of Alabama, in the case of McClure v. State, 17 Ala. App. p. 618, 88 So. p. 35, said the minutes of courts of county commis-

sioners are not required to be kept with the same clerical accuracy as are records of courts of general jurisdiction.

In the case of Hinshaw v. State, 47 Northeastern, p. 157 the Supreme Court of Indiana, said the word "minute" is defined by Webster to be a small portion; to set down a small sketch or note of, to jot down; or to make a brief summary of. The court in construing a statute which required the grand jury to select one of their own members as clerk, and to take minutes of their proceedings * * * held that the legislature did not intend to require that the grand jury write down the evidence in full of witnesses that testified before them.

In the case of Noxubee v. Long, 105 So. p. 83, the Supreme Court of Mississippi said:

> "The minutes of board of supervisors reciting their orders and judgments, like those of justices of the peace, will be looked upon with indulgence. Although they may be unskillfully drawn, if by a fair and reasonable interpretation their meaning can be ascertained, they will be sufficient to answer the requirements of law. Boards of supervisors, it is true, can only act through their minutes. But in this case they have acted through their minutes. * * *"

In my opinion, the rule as enumerated, supra, is applicable to your Board, and the only requirement in regard to the minutes is that if by fair and reasonable interpretation their meaning can be ascertained, they are sufficient to answer the requirements of law.

I have carefully examined your resolution and in my opinion when said resolution is passed by the Board, it will be a valid rule of the Board of Revenue and Road Commissioners of Mobile County.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. W. A. Austin,
Sheriff Elmore County,
Wetumpka, Alabama.

1. Sheriffs are paid for feeding prisoners charged with bastardy in the same way they are paid for feeding other prisoners charged with criminal offenses.

2. Sheriffs receive the costs to which they are entitled in prosecutions arising under Section 5571 of the Code as in other misdemeanor cases.

3. The fees in cases arising under Chapter 157, Code of Alabama, 1923, are paid as is provided by Section 4492, Code of Alabama, 1923.

4. Sheriffs are entitled to $5.00 for summoning special jury in capital cases as authorized by Section 3741 of the Code.

5. There is no authority of law for paying a sheriff for waiting on non-jury terms of the court.

6. There is no authority of law for paying the sheriff for waiting on what is commonly known as Inferior Court.

7. How sheriffs are paid for feeding and caring for insane and juvenile prisoners.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your request for my opinion as follows:

"1. How is a sheriff to get pay for feeding a prisoner charged with bastardy?

"2. What is a sheriff supposed to collect for serving a warrant, bond and summoning witness in non-support cases?

"3. How and from **whom** does a sheriff collect his fees in Juvenile Cases?

"4. How and from what funds am I supposed to collect fee for serving special jurors in capital cases.

"5. Are sheriffs allowed pay for waiting on non-jury term of court?

"6. How does a sheriff draw pay for waiting on Inferior Court?

"7. What rate per day is the county supposed to pay for feeding its insane and juvenile prisoners."

Answering your first request, I advise that you are paid for feeding a person charged with bastardy as in all criminal cases. While it is true bastardy cases are quasi criminal yet they are for all intents and purposes criminal cases. They are prosecuted in the name of the State and by the State Solicitor.

Therefore, if the defendant is convicted and fails to pay the cost or refuses or fails to make bond for the support of the bastard child, then in this event he must be sentenced to hard labor for the county. Paulk v. State, 52 Ala. 427; 92 Ala. 91. Grace v. State, 16 Ala. App. 366.

Answering your second request, if the person you refer to is prosecuted under Section 5571, Code of Alabama, 1923, subsection 8 which is as follows:

"Any able-bodied person who shall abandon his wife and children, or either of them without just cause, leaving her or them without sufficient means of subsistence or in danger of becoming a public charge."

You get your cost just as you do in all other misdemeanor cases. In the last analysis, it is just a prosecution for vagrancy, which is a misdemeanor.

Answering your third inquiry, I am presuming you are inquiring about costs which arise under Chapter 157, Code of Alabama, 1923, Vol. 2, page 445. Acting under this presumption, I call your attention to Section 4492, Code of Alabama, 1923, which Section is part of Chapter 157, supra. See opinion of the Attorney General Office Edition Book 4-A, page 194.

Answering your fourth inquiry I call your attention to Section 3741, Code of Alabama, 1923, which reads as follows:

"* * * For summoning jury in capital case, or at any special court for the trial of criminal to be paid out of the country treasury, $5.00."

I also call your attention to an opinion of this office written July 10, 1935, to Hon. George M. Burke, Jr., Sheriff of Talladega County. Biennial Report of the Attorney General, 1930-32, page 379.

My answer to your fifth inquiry is in the negative. See Torbert v. Hale Co., 131 Ala. 143, cited in opinion to Hon. W. A. Austin, Sheriff, Elmore Co., Wetumpka, Ala. September 7, 1935 (Op. A. G. Off. Ed. Bk. 6-A, pg. 117)

My answer to your sixth inquiry is in the negative. I find no authority of law for paying the sheriff for waiting on Inferior Courts See opinion to Hon. R. C. Beverly, Sheriff Randolph County, Wedowee, Alabama, June 10, 1935 (Op. A. G. Off. Ed. Bk. 4-A, pg. 168).

Answering your seventh inquiry I call your attention to Section 2798, Code of Alabama, 1923, as to the care of insane persons which is as follows:

> "2798. Compensation to persons caring for insane paupers.—The court of county commissioners and county boards of revenue shall provide a schedule of fees in their respective counties, to be paid out of the county treasury on their order, to the county officers, or any person duly deputized by such officers, to temporarily provide for the care and maintenance of any person alleged to be insane, when such person has no means of paying such expense, pending an investigation into the mental status of such alleged insane pauper, before the probate judge of such county. Such judge shall at the same time, hear evidence and decide therefrom the question of the ability of such alleged insane pauper to pay such expenses."

I do not think by commenting on the above statute, I could make this any clearer than the language of the statute, itself. I might say, however, if a person who is insane is placed in jail charged with a criminal offense, his feed bill is paid as is that of all other persons charged with a criminal offense, until and up to the time he is judicially ascertained to be insane, then after this the statute above quoted comes into operation and regulates the care of such prisoner. See Bien. Rep. Attorney General 1930-32, pg. 244, 247.

Now as to feeding juvenile offenders, there are so many things that enter into this that I am in doubt as to just what you have in mind but will say, if a juvenile is placed in jail charged with a criminal offense, then his feed bill is paid as other feed bills of persons charged with crime.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Roy Sanderson,
Judge of Probate, Marion County,
Hamilton, Alabama.

Commissioners Court.

1. Resolution of Court of County Commissioners appropriating $200.00 to the Public Welfare Department of the County, which was organized since the adoption of the budget and which has in a large measure assumed liability for the support of the inmates of the almshouse of said county, from the funds previously set up in the budget for the

support of the almshouse and the inmates thereof, and subsequently withdrawn, makes a valid and legal appropriation of county funds.

2. Probate Judge has legal right, under the provisions of the County Financial Control Act, Act No. 379, (General Acts 1935, at page 803), approved Sept. 9, 1935, to draw a warrant in pursuance of said resolution, provided there are sufficient funds in the county treasury to pay said warrant.

3. The County Financial Control Act, supra, does not prevent the withdrawal and/or reappropriation of funds by the Court of County Commissioners.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of April 17, 1935, with copy of resolution of the Commissioners Court attached, each of which follows:

"I am mailing herewith a copy of resolution or motion passed by the Court of Commissioners of Marion County at the meeting of April 16, 1936.

"I shall appreciate your opinion as to the legality of such an appropriation and whether or not I have the legal right to draw such a warrant.

"As you will see this appropriation is intended to be drawn from the account in the budget for 'Support of the Inmates of the Alms House.' The Court has previously, effective February 15, 1936, withdrawn the appropriation to the almshouse, and at this time comes along with the intent of reappropriating this sum of $200.00 in the manner shown in the motion. Before taking any action in the matter I want your opinion as to whether or not moneys can be withdrawn and reappropriated and whether or not I have a legal right to draw a warrant in such a manner.

"In addition will you please advise whether or not any withdrawal and/or reappropriation of funds can be legal under the County Financial Control Act?"

"RESOLUTION

"MOTION CONCERNING DEPARTMENT OF PUBLIC WELFARE

"Whereas, in the adoption of the budget for the government of the County affairs from October 1, 1935 to Sept. 30, 1936 the sum of $1200.00 was set aside for the support of the almshouse and the inmates thereof; and

"Be it resolved by the Commissioners Court of Marion County, Alabama, that the sum of $200 is hereby appropriated to the said Public Welfare Department of Marion County, out of the funds so set aside in said budget for the support of said almshouse and the inmates thereof, which shall be immediately available, and for which amount the judge of probate shall draw his warrant on the county treasurer.

"A vote was had on said motion which carried unanimously and it is so ordered by the Court

"The State of Alabama,
Marion County

"I, Roy Sanderson, Judge of Probate, in and for said County in said State do hereby certify that the above and foregoing is a true and correct copy of that certain resolution or motion as passed by the Court of County Commissioners in and for said County in said State at the meeting of April 16, 1936, as appears in the minutes of said Commissioners Court in Volume 7 at page 94 in this office

"This April 17, 1936

(Signed) ROY SANDERSON,
Judge of Probate,
Marion County."

It is my opinion that this resolution of the Commissioners Court makes a valid and legal oppropriation of county funds.

Act No. 332, (General Acts 1935, p. 762) approved August 27, 1935, provides in part as follows:

"Section 8. The aim of the State Department shall be the promotion of a unified development of the Welfare activities and agencies of the State and of the local governments so that each agency and each governmental institution shall function as an integral part of a general system. In order to carry out effectively these aims it shall be the duty and responsibility of the State Department to: (1) Administer or supervise all forms of public assistance including general home relief, outdoor and indoor care for persons in need of assistance, and old age pensions, also including those duties that have to do primarily with the determination of need and authorization of relief now performed by the Alabama Relief Administration. * * * * *"

The above quoted part of the Act, supra, makes it the duty and responsibility of the State Department of Public Welfare, among other things, to "administer or supervise all forms of public assistance including general home relief, outdoor and indoor care for persons in need of assistance * * *," in order to carry out the aim of the State Department, which is "the promotion of a unified development of the Welfare activities and agencies of the State and of the local governments so that each agency and each governmental institution shall function as an integral part of a general system."

In my opinion, a county almshouse is a "governmental institution," which provides "indoor care for persons in need of assistance" and therefore its administration or supervision comes under the State Department of Public Welfare by virtue of the above quoted portions of the Act, supra.

See Opinion of the Attorney General, addressed to Hon. A. H. Glasgow, Judge of Probate, Cleburne County, Heflin, Alabama, under date of February 20, 1936, a copy of which is enclosed for your information.

To carry out the aim of the State Department of Public Welfare as declared in Section 8 of the Act, supra, there is created by said Act, a County Department of Public Welfare in each of the counties of the State, to work in conjunction with the State Department in all matters pertaining to the Public Welfare in the respective counties.

Sections 10 and 14, inclusive, of the Act, supra, are the sections relating to the County Department of Public Welfare.

Section 13 of the Act, supra, prescribes the duties of the County Department of Public Welfare, among which are "relief to persons in need of assistance; the performance of similar welfare services, the care of dependent, neglected, delinquent and otherwise handicapped children and such other child-care activities, as shall be delegated to it by the State Department of Public Welfare, and the investigation of applications for admission to and discharges from county institutions providing care and treatment for indigents."

Section 14 of the Act, supra, provides in part as follows:

> "The County Board of Revenue, Court of County Commissioners, or other governing body of the County and incorporated municipalities within the County shall make joint appropriations for office space, supplies, and for the maintenance of the functions to be performed by the County Department of the Public Welfare, and shall mutually participate in the benefits thereof, but the amount to be appropriated by said governing body of the County and by each municipality shall be subject to the approval of the said governing body of the County and the participating municipality or municipalities. * * * * * *"

In view of the above, it is the duty of the County Board of Revenue, Court of County Commissioners, or other governing body of the County, to provide funds for the maintenance of the functions to be performed by the County Department of Public Welfare, and one of the functions of the County Department of Public Welfare, acting under the administration or supervision of the State Department of Public Welfare, is to provide "relief for persons in need of assistance."

Therefore, it is my opinion that the resolution of the Court of County Commissioners of Marion County appropriating $200.00 to the Public Welfare Department of the County, which was organized since the adoption of the budget and which has in a large measure assumed liability for the support of the inmates of the almshouse of said County, from the funds originally set up in the budget for the support of the almshouse and inmates thereof, and subsequently withdrawn, makes a valid and legal appropriation of county funds.

You further request my opinion as to whether or not you have a legal right to draw such a warrant. This inquiry must be answered in the affirmative, provided there are sufficient funds available in the County treasury out of which to pay said warrant. Section 5 of Act No. 379, (General Acts 1935, p. 803,) approved Sept. 9, 1935, provides in part:

> "* * * * * * No warrant shall be issued or check drawn on the County Treasury or County Depository by any person except the Judge of Probate or Chairman of the Board of Revenue, or like governing body, or such other officer as may be designated by such Board, * * * *"

but Section 7 of said Act provides in part:

> "No warrant or order for money shall be issued in pursuance of authority of the Board of Revenue, County Commissioners or other like governing body until funds are available for its payment upon presentation to the Treasurer or depositary."

You further request my opinion as to whether or not any withdrawal and/or reappropriation of funds, can be legal under the County Financial

Control Act which is the 1935 Act referred to by me in answer to your second inquiry.

I have carefully examined said Act and find nothing therein that would prevent a withdrawal and/or reappropriation of funds. The Act requires the Court of County Commissioners, not later than its first meeting in October of each year, to make an estimate of the income for the general fund for the fiscal year beginning October 1st and to estimate for the same fiscal year the expense of operations, and to appropriate for the various purposes the respective amounts that are to be used for such purposes; but there is nothing in the Act that prevents said body from revising its estimate of the income or its estimate of the expense of operations or the appropriations made for the various purposes at a later date. As a matter of fact, such a revision will almost invariably be necessary. In my opinion the only limit placed by the Act, supra, on the power of the governing body to make appropriations for valid and legal purposes is the provision in Section 3 of said Act which declares that the total of appropriations made for all purposes shall not exceed the estimated total income of the County available for appropriation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Chas. E. McCall,
State Auditor.
CAPITOL.

Statutes—Act No. 418 (Local Acts 1931, p. 193) Approved July 17, 1931, held constitutional.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter in which you request my opinion as to the constitutionality of Act No. 418, House Bill 599, approved July 17, 1931 (Local Acts 1931, page 193), for the relief of Fred Folsom, a former Tax Collector of Coffee County.

I am of the opinion that said Act is not violative of any constitutional provision.

The Local Act in question provides as follows:

"For the relief of Fred Folsom, a former Tax Collector of Coffee County, Alabama, authorizing and directing the payment by the State and Coffee County of expenses incurred and moneys expended by him in undertaking to collect taxes in Coffee County, Alabama, during the time that there were no permanent tax records of the County of Coffee by reason of the theft, loss or destruction of said records, said expenses and expenditures being and consisting of the following:—hire of deputies and assistants $736.00, mileage and gasoline and oil used in cars in making levys, etc. $279.83, amounting in the aggregate to $1015.83, which he has paid with his own private funds and for which he has never been reimbursed.

"Section 1. WHEREAS, Fred Folsom, was Tax Collector of Coffee County, Alabama, in the year 1920-1921, and that during said time the Tax Records of Coffee County were stolen, lost or destroyed and that unusual expenses were incurred by him in undertaking collection of taxes in said County which were due October 1, 1920, and delinquent January 1, 1921, from the period February 18, 1921, to October 1, 1921; and Whereas, said Fred Folsom expended out of his own private funds the sums of $1015.83, of which $736.00 was for the hire of deputies and assistants and $279.83, was for mileage and gasoline and oil, which sums so spent were reasonably necessary in undertaking the collection of the then due and delinquent taxes in said County; and Whereas in the Act of the Legislature of Alabama undertaking to reimburse and compensate the Officers of the County affected by the said loss, theft or destruction of said tax records, viz: 'An Act to provide for the substitution of tax records etc. (Acts Spec. Session of 1921, p. 22)' the reimbursement and compensation of tax collectors was omitted. Now, Therefore,

"BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

"That the Court of County Commissioners of Coffee County, Alabama are hereby authorized and directed to pay to the said Fred Folsom as reimbursement for said expenditures hereinabove mentioned, two-thirds of the said sum of $1015.83, that is to say the sum of $677.22; and the State Auditor of Alabama is hereby empowered, authorized and directed to draw a warrant in favor of the said Fred Folsom, on the State Treasurer, for one-third of the said expenditures aforementioned, that is to say, $338.61; the payment by the County to be made out of the General Fund of the County; and the payment by the State to be from any funds in the Treasury of the State not otherwise appropriated.

"Section 2. That this act shall take effect immediately upon its approval by the Governor.

Approved July 17, 1931."

Section 68 of the Constitution provides as follows:

"The Legislature shall have no power to grant, or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant, any extra compensation, fee or allowance to any public officer, servant or employee, agent or contractor, after service shall have been rendered or contract made; nor to increase or decrease the fees and compensation of such officers, during their terms of office; nor shall any officer of the State bind the State to the payment of any sum of money, but by authority of law; provided this section shall not apply to allowances made by commissioners' court, or boards of revenue to county officers for ex-officio services, nor prevent the Legislature from increasing or diminishing at any time the allowance to sheriffs or other officers for feeding, transferring or guarding prisoners."

If said Act attempts to grant to the Tax Collector of Coffee County extra compensation for duties that he, as Tax Collector was required to perform, it violates Section 68 of the Constitution.

Our Supreme Court has held that an appropriation made in the discharge of a moral obligation resting upon the State must be regarded as being for a public purpose and within the constitutional powers of the Legislature, and

the fact that a private person may receive the benefit of such appropriation does not constitute the act of appropriation a private one.—**State v. Clements**, et al. 220 Ala. 515, 126 So. 162, and cases cited therein.

However, in my opinion, the expenses for which said Act undertakes to reimburse the then Tax Collector were not ordinarily incident to the duties imposed upon him by law; and the same is not violative of Section 68 of the Constitution, supra. Compare Clark v. Eagerton, et. al. 207 Ala. 491, 93 So. 455.

The history of the destruction, loss or theft of the County tax records of Coffee County is written into the statutes and the judicial decisions of this State. See Acts Special Session 1921, pages 19, 22, Bailey v. Folsom, Tax Collector, 207 Ala. 329, 93 So. 479, Wise v. State, 208 Ala. 58, 93 So. 886, Folsom v. Carnley, 210 Ala. 131, 97 So. 95, Miller Brent Lumber Co. v. State, 210 Ala. 30, 97 So. 97, Clark v. Egerton, et al, supra.

In the last cited case, a taxpayer filed a bill in equity alleging that the Commissioners Court of Coffee County had entered into an agreement to pay a part of the expenses of the reestablishment and substitution of new tax assessment records to replace the original tax records of the County which had been stolen from the Court House and **to pay a part of the expenses incurred in the collection of the taxes due** under said assessments, when reestablished; and that the county tax assessor and tax collector in conjunction with the State Tax Commission were proceeding under said agreement to employ persons to aid them in reestablishing the said stolen tax records and in **collecting said taxes.** The bill prayed for injunction to restrain the Commissioners Court and the other respondents from executing said agreement and from paying any part of said expenses, on the theory that the said court had no authority to incur such expenses to be charged to the County for the purposes named.

In speaking to the question, the Supreme Court said:

> "Taxes have often been called the lifeblood of government, without which it cannot perform its necessary functions, or even long endure. 'Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.' Dows v. Chicago, 11 Wall. 108, 20 L. Ed. 65; Ala., etc. Ins. Co. v. Lott, Tax Col., 54 Ala. 499, 507"

The court, without actually grounding its decision upon that theory, recognized the fact that in acting in the emergency created by the theft of the tax records, the tax assessor and tax collector were called upon to perform acts not ordinarily incident to their usual duties. In my opinion, the Eagerton case supra, is apt authority to sustain the Local Act here under consideration, as against an attack upon its validity under Section 68, supra.

Your attention is invited to the provisions for relief of County Tax Officers incorporated into the original Act for substitution of lost or destroyed tax records. (Acts Special Session 1921, page 22). This law confessedly was enacted to meet the then existing situation in Coffee County. It provided (Section 24) for reimbursement to the Tax Adjuster for expenses which were extra to those incident to his regular duties, incurred by him in the reestablishment of such lost or destroyed records; and provided (Section 25) extra compensation for the Tax Assessor and his deputies for services rendered under like circumstances. Apparently the failure to provide extra compensa-

tion therefor, or for the extra expenses of the Tax Collector in such contingency was due to inadvertence rather than to design.

The preamble of the 1931 Act, now under consideration, recites that the reimbursement which is thereby provided, is for "unusual expenses" incurred by the then Tax Collector during a time when the tax records of the County were lost or stolen, and that said expenses so incurred were "reasonably necessary" to the collection of the then delinquent taxes. There is nothing in the Act which indicates that the money appropriated thereby is in payment of "any extra compensation, fee or allowance" for any service rendered by the former officer within the meaning of Section 68 of the Constitution. On the contrary, it appears that the appropriation is to reimburse the former Tax Collector for reasonably incurred expenditures made by him to meet an unforseen emergency which was not within the usual and ordinary duties of his office.

In my opinion, the Act is valid, and the monies appropriated to the beneficiary therein named should be paid over to him, if and when available funds are in the Treasury.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Henry S. Long, Chairman,
The State Tax Commission,
C A P I T O L.

Credit Unions—organized under Acts 1927, p. 696 are "Financial Institutions" within the meaning of Section 346.1 et seq. of Acts 1935, p. 256 and the excise tax there levied.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of April 8th asking my opinion whether credit unions whose organization and operation is provided for by General Acts 1927, page 696 are to be classed as Financial Institutions within the meaning of Section 346.1 et seq. of the Revenue Act of 1935, and if so, whether they would also be liable for the similar excise taxes levied by the prior Acts of 1932 and 1933 (Acts 1932, p. 107 and Acts 1933, p. 104).

It will be observed that under Section 4 of the Act providing for the organization of Credit Unions (Acts 1927, p. 696) they are given the following powers:

"Section 4. Powers: A credit union shall have the following powers: (a) To receive the savings of its members either as payment on shares or as deposits (including the right to conduct Christmas Clubs, Vacations Clubs and other such thrift organizations within the Membership). (b) To make loans to members for provident or productive purposes. (c) To make loans to a cooperative society or other organization having membership in the credit union. (d) To deposit in safe and National banks and, to an extent which shall not exceed twenty-five per cent of its capital, invest in the shares of buildings and loan associations and of other credit unions. (e) To invest in any investment legal for savings

banks or for trust funds in the state. (f) To borrow money from any source and to give its note therefor, provided that such borrowing shall not at any time exceed fifty per cent of its assets."

By Section 1 of the Act it is provided that credit unions are to be incorporated for the two fold purpose of promoting thrift among their members and creating a source of credit for them at legitimate interest rates.

By Section 346.1 of the Act of 1935, page 256 (428) and for the purposes of the excise tax levied thereon, "Financial Institutions" are defined as follows:

"Section 346.1 (a) 'Financial Institutions' shall mean and include any person, firm corporation, and any legal entity whatever doing business in this State as a national banking association, trust company, industrial or other loan company, building and loan associations, and shall likewise include any other institution or person employing moneyed capital coming into competition with the business of national banks, and shall apply to such person or institution regardless of what business form and whether or not incorporated, whether of issue or not, and by whatsoever authority existing.* * *"

In view of the express statutory power, among others, to accept deposits of money and to make loans, I am impelled to the conclusion that credit unions, organized under the 1927 Act above referred to, are "Financial Institutions" within the meaning of Section 346.1 et seq. of the 1935 Revenue Act, and not having been expressly exempted therefrom, are required to make the returns and pay the excise tax computed as therein provided. While Section 21 of the 1927 Act (Acts 1927, p. 701) provided that such credit unions should be subject to taxation only as to real estate owned and as to corporate franchise tax, such provision is inconsistent with Section 346.1 of the 1935 Revenue Act to the extent of the excise tax levied, and to that extent is repealed by the 1935 Act. Of course, such credit unions are entitled to the same credits and exemption as are given "Financial Institutions" under the 1935 Revenue Act.

Whether such credit unions should be now required to make returns and pay the taxes, if any, as "Financial Institutions" under the substantially similar Acts of 1932 and 1933, would in part be determined by the interpretations and regulations adopted and applied by the Tax Commission and the action taken thereon during the years in question. Since I am not advised of the facts in this regard, I shall defer answering these questions at present.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Chas. W. Lee,
State Comptroller,
CAPITOL.

Taxation—Interest—Interest on delinquent tax computed beginning with date upon which same becomes delinquent and including day upon which same is paid.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Section 11 of the Revenue Code of 1935 provides that 'all taxes, unless otherwise provided by law shall become due and payable on the first day of October in each year, and shall become delinquent if not paid before the first day of January succeeding. * * *"

"In view of Section 9111 of the Code of 1923 and the wording of the above Section 11 'if not paid **before**' how many days of interest would be due if taxes are paid on February fourteenth, 44 or 45?"

In my opinion, taxes which become due prior to December 31st if paid on February 14th would bear interest for every day beginning with January 1st and including the date of payment.

Cf Hough v. Bozeman's Executors, 29 Ala. 398.

Section 9111 of the Code of Alabama 1923, to which you refer, relates only to negotiable instruments and has no relevancy to the computation of interest upon delinquent taxes.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Matt A. Boykin,
Judge of Probate, Mobile County,
Mobile, Alabama.

Statutes—Acts 1935, p. 791, not violative of Section 45 of the Constitution.

Statutes—it is within the power of the Legislature to enact laws reasonably regulating the qualifications of newspapers as media of legal advertising.

(Acts 1935, p. 791).

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"The bill by Mr. Dominic (Acts 1935, p. 791) amends Section 9257 of the Code of Alabama of 1923 to such an extent that legal advertisements may not be published in a newspaper not printed in whole or in part in the County where the newspaper is published. Many lawyers of this City request me to publish notices in a newspaper of this County which is not printed in this County, and the amended section places the cost of publishing the advertisement on me if I disregard the designation.

"It has been suggested that the act is unconstitutional because the requirement as to the printing of the newspaper is not germane to the section before its amendment, and because the requirement that the newspaper be printed in the County does not come within the police

power and can have no bearing on the general welfare of the county or state.

"Will you please advise me as follows:

"One. Is the act constitutional as against the provisions of Section 45 of the Constitution, or is it true that the added feature as to the printing is not germane to Section 9257 of the Code of Alabama 1923?

"Two. Is the requirement that the printing of the newspaper be done in the County where it is published a valid exercise of the police powers?"

In my opinion the Act in question is not violative of Section 45 of the Constitution.

The title of the Act is "To amend Section 9257 of the Code of Alabama of 1923, regarding printing and publication of legal advertisements". The Code Section thereby amended provided, among other things: "but all publications required to be published in a newspaper must be published in a newspaper printed in the English language and one that has a general circulation in the County in which it is published."

This was a mere legislative declaration of the qualification necessary to constitute a newspaper an approved medium of advertisement. The pertinent provisions added by the amendment are:

(1) "But all publications required by any law or mortgage or other contract to be published in a newspaper must be printed in whole or in part and published in the county in which the advertisement is published * * *.

(2) "Which newspaper shall be mailed under the second class mailing privilege of the United States Post Office Department from the Post Office where it is published, for fifty-two consecutive weeks."

The matters added by the amendment are merely refinements of the legislative declaration of the qualifications necessary to constitute a newspaper an approved medium of legal advertisement. They are cognate to the Code Section amended and do not add any new and different subject. The Act does not violate Section 45 of the Constitution.

Cf. Board of Revenue v. Jansen, 224 Ala. 240 and cases there cited.

Your second inquiry must be answered in the affirmative.

Neither the Supreme Court nor the Court of appeals of Alabama has spoken to the precise question. The Alabama Supreme Court, in Age Herald Publishing Co. vs. Huddleston, 207 Ala. 40, h. n. 4, has defined the meaning of the term "to publish a newspaper", but that decision throws no direct light upon the inquiry under consideration.

However, the Courts of last resort of other states have had the question for decision.

See 3rd Dec. Dig. and Current Digests "Newspapers" Key No. 3 (1).

The Supreme Court of California, in re Monrovia Evening Post, 248 Pac. 1017, had the question squarely presented for solution. Section 4458, et seq. of the Political Code of California required that the publication of official

notices or advertisements by any officer of the State or of any political subdivision thereof, or any officer of any court or county, city or town within the State must be made only in a newspaper of general circulation * * * within the jurisdiction of such officer.

Section 4460 provides:

"A newspaper of general circulation is a newspaper * * * **printed and published** at regular intervals, in the state, county, city, city and county, or town, **where such publication, notes by publication, or official advertising is given or made,** for at least one year preceding the date of such publication, notice or advertisement."

Section 4463 provides that:

"* * * * The word 'printed' as used in said section (4460) shall mean and be construed to mean, that the mechanical work of producing such a newspaper of general circulation, that is to say, the work of typesetting and impressing type on paper, shall have been performed during the whole of the period as designated and required by said Section. The word 'published', as used in said section, shall mean, and be construed to mean, that such a newspaper of general circulation **shall have been issued from the place where it is printed.**"

There the Court said:

"Applying the foregoing legislative definitions to the instant case, as it is presented by the uncontradicted evidence, the Monrovia Evening Post is printed where the typesetting and mechanical part of the work is performed. The mechanical work is done at Pasadena and not at Monrovia. It necessarily follows that the Monrovia Evening Post is printed and published at Pasadena and not at Monrovia.

"It may have been a matter of excellent business economy to print and publish the Monrovia Evening Post in conjunction with the Pasadena Evening Post at its shop in Pasadena, but certainly, according to the clear letter of the statute, it is neither printed nor published at Monrovia, and is, therefore, not a newspaper of general circulation within the city of Monrovia, nor qualified to print legal notices which are required to be published in a newspaper of general circulation within that particular city.

"The respondent in the instant case contends that to require the mechanical printing to be done in the same city where the newspaper is published and circulated is an unreasonable and unconstitutional violation of the police powers of the state. Many cases are cited in which it has been held that various unreasonable and unconstitutional restrictions of certain occupations were unconstitutional and void. None of these cases involve the exact question here presented, and are, therefore, scarcely worthy of review.

"It is true that the Legislature, in the guise of exercising its police powers, may not impose onerous or unreasonable burdens upon the lawful and useful occupations. But it is equally true that the state has the inalienable right to reasonably regulate private business enterprises in the interest of public health, peace, morals or the general welfare. The question of the reasonableness of police regulations is addressed primarily to the Legislature, and courts will exercise the utmost liberality in upholding the legislative intent. 23 Cal. Jur. 757, Sec. 132; Brown v.

City of Los Angeles, 183 Cal. 783, 192 P. 716. To be sure the police power may not be resorted to merely to promote private gain, but the public interest, as distinguished from that of private individuals, is the basis of its power and alone warrants its exercise.

"Does not the prescribing of the qualifications constituting a newspaper of general circulation, authorizing it to print the official advertising and the public notices required by law, come directly within this rule? We think it does.

"The very purpose of requiring the publication of official notices is to inform the people concerning proceedings of a public nature for their general welfare. It appears reasonable to require such notices to be published in newspapers having a fixed and permanent domicile and a substantial circulation at the city or place where the inhabitants live who are most vitally interested in the transactions respecting which notices are required. At least, it is not unreasonable to expect the citizens of a particular community to rely upon their local newspaper primarily to inform them of the proceedings of their own local officers and the affairs of local public importance. No doubt it is on this theory that the Legislature has seen fit to require such official advertising to be done only in newspapers of general circulation, both printed and published in the place where such notices are given or made."

In my judgment, the logic and reasoning of the California Court, supra, is unanswerably applicable to the so-called Dominic Act, supra. See also Smackover Journal v. News Times Publishing Co. (Ark.) 48 S. W. (2) 219; State ex rel Vickers v. Board of Comrs. of Big Horn County (Mont.) 250 Pac. 606. Carter v. Land, (Ga.) 164 S. E. 205; Bayer v. Hoboken, 44 N. J. Law 131.

Cf. Quarterly Report of the Attorney General of Alabama, Oct.-Dec. 1935, pp. 119-146.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. J. A. Carnley,
Probate Judge,
Coffee County,
Elba, Alabama.

Elections—Probate Judge held

(1) Entitled to 2½c per name for making lists of qualified voters of the county, annually.

(2) Not entitled to compensation for preparing lists of voters provided for by Section 402 of the Code of 1923 as amended by Acts of 1927, page 277 and Acts of 1931, page 293.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of March 2, 1936, in which you request my opinion as follows:

"I am requesting your opinion on the matter of payment to Probate Judge for making up and causing to be published a list of the qualified voters of the County. Heretofore every two years I have caused to be made a complete list of all qualified voters of the County for publication, a copy of which I have furnished to the Secretary of State, and I have charged for these lists each year 2½ cents a name, which has been paid by the Court of County Commissioners. I thought this was right and legal, but a recent examination of the records of the Court of County Commissioners made by Mr. H. M. Taylor has construed such payments illegal.

"I would like to know if the Probate Judge is entitled to collect 2½ cents a name for making the list to be published this year.

Secondly, I wish to inquire if a Probate Judge is entitled to not exceeding 5 cents a name for making these qualified lists for Inspectors of primary, general and special elections. Please give me your opinion at the earliest date possible."

In reply, I wish to advise that in my opinion your first question should be answered in the affirmative. I refer you to Section 7285 of the Code of 1923, which provides in part as follows:

"For preparing list of registered voters, as required by section 187 of the constitution, two and one-half cents a copy for each voter enrolled, to be paid by the county commissioners in each county."

See also Section 401 of the Code of 1923, which provides as follows:

"401. List of names registered by precincts.—The board of registrars shall each year within two weeks after the expiration of the time prescribed for registration, make a copy of the list of names registered, stating the residence, color and sex of the persons registered by precincts, if not in an incorporated city or town, or by ward if in an incorporated city or town, which copy, along with the registration list, must be returned to the office of the judge of probate of the county. The judge of probate shall certify an alphabetical list to the secretary of state. The judge of probate shall keep both the original list filed by the registrars and the alphabetical list made therefrom as recorded in the office of the judge of probate of the county, which shall be open to public inspection."

Premises considered, it is my opinion that the lists here contemplated should be made by the Probate Judge and that the Probate Judge is entitled to the compensation as fixed by Section 7285, supra.

I wish to further refer you to Biennial Report of Attorney General 1922-1924, page 461.

In reply to your second question, I wish to advise that in my opinion the Probate Judge is not entitled to collect "not exceeding 5 cents a name" for making lists of qualified voters for inspectors of primary, general and special elections. Section 402 of the Code of 1923 as amended by the Acts of 1927, page 277, as further amended by the Acts of 1931, p. 293 provides for compensation in an amount not to exceed 5 cents per name for making the lists here contemplated to be paid to assistants to the Probate Judge but no compensation is provided for the Judge of Probate himself.

The Acts of 1915, page 239, Section 14 made provisions for payment to the Probate Judge for the service contemplated here. An Act approved October 2, 1920 (General Acts 1920, p. 124) expressly repealed the prior Acts on this question. I find no authority of law granting any compensation to the Probate Judge himself for these services since the repealing Act of 1920 became effective. I wish to further refer you to an opinion of the Attorney General reported in the Biennial Report of the Attorney General 1920-22, p. 75. An opinion of the Attorney General directed to Hon. I. I. Moses, Chairman of the County Commission, Russell County, under date of February 12, 1935 is partially in conflict with the holding here announced and to this extent is reformed to agree with the holding of the instant opinion. See also opinions of the Attorney General 1926-28, pp. 146 and 147.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. J. L. Reynolds,
Tax Collector,
Barbour County,
Clayton, Alabama.

Schools—Special three mill district tax election voting the levy and collection of tax for seventeen years from September 30, 1936, authorizes collection of tax for tax year of 1936 under facts stated.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of May 6, 1936, together with other data, from which the following facts appear:

A special three mill district school tax for the City of Eufaula was duly voted in an election held on January 28, 1936. On January 29, 1936, the county governing body ordered, adjudged and decreed that the tax in question shall be levied and collected annually for a period of seventeen years from September 30, 1936 to October 1, 1953. The ballot provides in substance as follows:

"Election January 28th, 1936, to determine whether or not to levy and collect a tax of thirty cents on each one hundred dollars' worth of taxable property in city of Eufaula, Alabama (districts number 53 Barbour County, Alabama), to begin from September 30th, 1936, and to continue for seventeen (17) years from said September 30, 1936, and to be for public school purposes within said city and district."

In view of the above you request my opinion as follows:

Assuming that all of the procedure relative to the voting and levying of the tax in question to be proper, will the tax in question be collectible in 1936 or 1937,.

In answer to your inquiry, it is my opinion that the tax in question is collectible in the tax year beginning October 1, 1936.

The proposition submitted to the voters of the district, and ratified in the election, was to levy and collect the special three mill tax annually for seventeen years running from September 30, 1936. The election was held on January 28, 1936, and the order of the county governing body was made on January 29, 1936, within the assessment tax year of 1935-1936.

It will be noted that the tax was to be levied and **collected** for seventeen years from September 30, 1936. If same is to be collected seventeen years from September 30, 1936, it necesarily follows that the first collection shall begin October 1, 1936. If this be considered as retroactive it does not invalidate the tax.—**Alexander v. Board of Revenue,** 219 Ala. 110, 121 So. 390. See also **Perry County v. Selma M. & M. R. Co.** 58 Ala. 546; **Biennial Report of Attorney General,** 1914-1916, p. 27.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. James C. Brown,
Register, Tuscaloosa County,
Tuscaloosa, Alabama.

The Act of the Legislature, S. B. 97 by Tucker, went into effect March 31, 1936, the day of its approval.

The law only applies to cases which went on the docket of the Circuit Court after its approval.

The register who collects this fee or tax on cases that go on the Equity docket of Tuscaloosa County is not entitled to commissions on same.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 6, 1936, in which you request my opinion as follows:

"I understand that the Legislature has recently passed a law requiring the Register to collect a fee for Maintenance of Law Library in this County. Kindly inform me just when this law goes into effect and as to how much is to be collected by the Register in each case, etc.

"Does it refer to all cases now on the Docket which have not been disposed of or does it apply to cases filed after some certain date?

"Will the Register be entitled to a commission of five per cent on such fees as is the case with Trial Taxes?"

Answering your first inquiry will say the Act you refer to went into effect upon its approval March 31, 1936. As to how much you would collect on each case that goes on the docket of the Circuit Court as a law library fund of Tuscaloosa County, my advice to you is to get a copy of the Bill. It sets out in detail the way you are to collect same and under what conditions.

It is my opinion that this tax attaches only in cases that went on the docket of the Circuit Clerk after the approval of the Act which was March 31, 1936. You will note the Act says:

"hereafter filed or brought by appeal certiorari or otherwise to the Circuit Court."

Therefore it is my opinion that this would not include and apply to cases pending at the time of the approval of this Act.

In the following cases which go upon the docket of the Circuit Court the library fee can only be $1.00, instead of $2.00 as provided in the first part of this Bill: Cases appealed from the Recorder's Court and divorce cases where no alimony is awarded and in all civil and equity suits and proceedings where the amount of the money, judgment or decree, including the cost of court, is for less than $200.00. I know of no reason, under the special Act, supra, why proceedings for removal of non-age should not carry this tax or fee, as such actions do not come under the exemptions and I think it should apply with equal force to the ex parte petitions which are not purely ancillary.

Answering your questions further, will state the Act provides that this fund be expended by the Circuit Clerk on the order of the Circuit Judge for the purchase of books and fixtures of the law library of Tuscaloosa County. I am aware that in many counties of this State the Clerk of the Circuit Court and the Register of the Court are separate and distinct officials, while on the other hand in many of the counties the two are combined in one person. Section 7278 Suppl. to the Alabama Code (Code of Ala. 1928, Michie) which regulates commissions on money that is collected for the State is as follows:

"7278. Fees of clerk and register for collection of money—The Clerks and registers of the several circuit courts of the State of Alabama shall receive five per cent of any sum or sums collected by such clerk or register for the State of Alabama, as compensation for the collection and remittance of the same, the said percentage to be deducted by such clerk or register making the collection from such sum or sums collected."

I do not think the above Section governs monies such as you call attention to as the taxes or fees, for the library fund of Tuscaloosa County does not go to the State but is a separate fund collected and distributed as suggested above.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. C. E. Corprew, Sheriff,
Tallapoosa County,
Dadeville, Alabama.

Managers and Clerks—Counting Absentee Ballots—Managers and Clerks who count and certify the absentee ballots of the various counties of the State are entitled to pay for the service as other Managers and Clerks of the various precincts are paid.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 24, 1936, in which you request my opinion as follows:

"I would thank you to give me an opinion as to whether or not the managers and clerks who handle and count absentee ballots in general and primary elections under an Act approved April 19, 1933 (General Acts, Extra Session 1933, p. 193), can be paid for this service by the County?"

I call your attention to Section 5 of an Act approved April 19, 1933 (Acts 1933, p. 193) which is as follows:

"Section 5. In addition to the managers and clerks now provided under the laws of this state for elections, there shall be, for all future elections, whether primary, general, special or municipal, appointed at the same time and in the same manner by the appointing board of the county or city, three managers, two clerks and a returning officer, who shall meet in the office of the Judge of Probate of the County, (or, except in the case of municipal elections, in a place to be designated by the appointing board) on the day of said election and remain, as officers at other polling places, for the purpose of receiving the ballots of absentee voters from the Judge of Probate, or other person authorized to handle them, as provided herein. The absentee ballots cast as provided by law shall be by said election officers specified in this section, tabulated separately by precincts and returns thereof made as now provided by the laws governing the conduct of elections. The managers, clerks and returning officer provided for in this section shall be governed in all respects in the performance of their duties by the laws governing all elections, and shall be subject to the same penalties as other election officers. Provided, however, that the officers appointed under the provisions of this section may begin tabulating said absentee ballots as soon as they are received by them from the person authorized to deliver same. Provided further, that this section shall not apply to municipal elections in cities and towns whose population is less than 10,000 inhabitants."

You will note from the above that the managers and clerks who are charged with counting and certifying the absentee ballots are just as much managers and clerks of an election as are the managers and clerks who hold an election in the various precincts in the county. Then if the managers and clerks of the various voting places in the county can be paid by the County, it naturally follows that the managers and clerks who count and certify the absentee ballots can likewise be paid.

I call your attention to Section 509, Code of Alabama, 1923, which is as follows:

"509. Pay of election officers—The returning officer, the inspectors and clerks, shall each be entitled to two dollars, and the returning officer, in addition to five cents a mile in going to the courthouse and returning to the place of holding the election; the several claims to be paid out of the county treasury, on proper proof of the service rendered, to be preferred claims, payable from the money in the treasury not specially otherwise appropriated."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. H. W. Clayton,
Clerk of the Circuit Court,
Marshall County,
Guntersville, Alabama.

Habeas Corpus: Clerk of the Circuit Court is not entitled to be paid out of the Fine and Forfeiture Fund for preparing a transcript for a defendant who appeals from the Circuit Court to the Court of Appeals of Alabama in a habeas corpus proceeding.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 10, 1936, in which you state:

"Please advise me as to whether or not the Clerk of the Circuit Court is due F. & F. Claims from the Fine and Forfeiture Funds in the case of State of Alabama v. Thomas L. Haney as follows:

"This man was indicted by the Grand Jury of Marshall County for murder in the 1st degree. Bail having been denied, his attorneys appealed to the Court of Appeals. The Court of Appeals affirmed the decision of the lower court. This man was tried on the charge of murder in the first degree and was acquitted on his plea of insanity."
You request my opinion:

"Is the Clerk of the Circuit Court entitled to the transcript which he made to the Court of Appeals, chargeable to the Fine and Forfeiture Funds of said County?"

In my opinion your question should be answered in the negative.

The liability of the fine and forfeiture fund for the payment of costs and fees is entirely of statutory origin, and, therefore, it is necessary to bring a claim within the operation of the statute, as a necessary prerequisite to fixing any charge on said fund.—**Jackson v. Derrich**, 117 Ala. 365, 23 So. 193; **Alston v. Yerby**, 108 Ala. 480, 18 So. 559.

In my opinion habeas corpus is a civil proceeding, although the statutes relating to habeas corpus are in the Criminal Code, habeas corpus is not a criminal remedy or proceeding. A write of habeas corpus sued out by one arrested for crime, is a civil writ or proceeding brought by him to assert the civil right to personal liberty. It is a writ to enforce a civil right.—Ex parte **Tom Long**, 108 U. S. 556, 27 L. Ed. 826, 2 Sup. Ct. 871; **Riddle v. Dyche, Warden of the United States Penitentiary at Atlanta, Georgia**, 236 U. S. 333. See also **29 Corpus Juris**, p. 8, and cases cited thereunder.

In the case of Ford v. Dilley, Sheriff of Woodbury County, 156 N. W. p. 513, the Supreme Court of Iowa held that a habeas corpus proceeding to require admission to bail was a civil and not a criminal proceeding.

As habeas corpus is a civil proceeding, in my opinion there is no authority for the costs incurred to be paid out of the County Fine and Forfeiture Fund.

An opinion of this office to Hon. John B. Weaver, Judge of Probate, Double Springs, Winston County, Alabama, under date of June 19, 1931, is hereby overruled and withdrawn.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. W. C. Batson,
Judge of Probate,
Chambers County,
LaFayette, Alabama.

Counties—may pay transportation charges of manager of Reemployment Service covering visits to such county.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of recent date in which you request my opinion as follows.

"The re-employment office here has a man who comes once a week to Chambers County, and he draws a very small salary, his bus fare amounts to about $8.00 a month; please advise me if the County could take care of this small amount each month out of the general fund."

I am of the opinion that your inquiry should be answered in the affirmative.

Section 6755, subsection 6, of the Code of Alabama 1923, as amended by an Act of 1931, page 759, authorizes the Court of County Commissioners or other like governing body to provide for the support of the poor as follows:

"To make such rules and regulations for the support of the poor in the county as are not inconsistent with any law of the State."

In view of an opinion rendered by this office on July 2, 1934 to Hon. B. L. Malone, Judge of Probate, Morgan County, (Biennial Report Attorney General, 1932-1934, page 595) in which it was held that the Section above quoted was sufficiently broad to allow the County Board of Revenue to pay the office rent, etc. of the National Reemployment Service, I believe it would be proper for the county government to make an appropriation to cover the traveling expenses of the party mentioned in your inquiry, where the accounts are properly audited and certified for payment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Earle Thomas,
Senator 15th District,
Clanton, Alabama.

Senate Bill No. 30, approved March 17, 1936, relating to the Agricultural Fund of Chilton County, held constitutional.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of April 15, 1936, requesting my opinion as follows:

"Will you please give me a written opinion on Senate Bill No. 30, of which I am enclosing a copy. Please mail a copy of this opinion to J. Lee Smith, Judge of Probate, Clanton, Alabama, and a copy to J. W. Fant, Clanton, Alabama."

I have checked the passage of Senate Bill 30 by Thomas, approved March 17, 1936 and find that same is in accordance with Constitutional requirements in all respects.

No particular feature of the Act is at this time being questioned and consequently no part of the Bill is being called especially to my attention. I am of the opinion that the Act is constitutional.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. Frank O. Deese,
Judge of Probate,
Dale County,
Ozark, Alabama.

Courts of County Commissioners—Retirement of bonds at premium. The Court of County Commissioners is authorized to buy in outstanding bonds at a premium where the sinking funds of the county are bringing in no returns and where from a consideration of all the facts, the court is of the opinion that it would be to the County's best financial interest to retire such bonds at a premium.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 23 in which you state:

"In the year 1921, Dale County issued $150,000.00 of County Road and Bridge Bonds, bearing interest at the rate of six per cent per annum and maturing in 1951. In the resolution authorizing the issuance of these bonds, it was provided that sinking fund be created to retire these bonds at maturity. The County Treasurer now has on hand several thousand dollars in this sinking fund which is lying idle and bringing no return to the County. However, the County is having to pay interest on the entire outstanding bond issue. The County can buy in some of these bonds at a premium. In our judgment, it would be for the best interest of the County to pay this premium thereby saving interest on these bonds until the maturity date of the bonds in 1951. We submit these inquiries to you:

"1. Has the Court of County Commissioners, or the County Treasurer, authority to pay a premium for these bonds?

"2. Is the Probate Judge authorized to issue a warrant for the repurchase of these bonds at a premium?

"In connection with these inquiries, I desire to call your attention to the Biennial Report of the Attorney-General ,1924-26, page 305, in which it was decided that, as a general rule, a premium cannot be paid for bonds in order to retire them before maturity, and, to the Biennial Report of the Attorney-General, 1932-34, in which it was decided that such a transaction, if it will and does allow a saving to the County, may be done legally."

You attach a letter from Hon. Chas. O. Stokes, County Attorney, under date of April 23, advising you that you are authorized to buy in the bonds of the county or a part of them at a premium before maturity if the same would be a substantial saving to the county.

You call my attention to an opinion of the Attorney General appearing in Biennial Report 1932-1934, page 261 addressed to the Hon. J. H. Hard, Jr. State Comptroller, in which, in response to almost your identical inquiry it was stated:

"As a general rule a premium cannot be paid for bonds in order to retire them before maturity. Biennial Report Attorney General, 1924-26, page 305. But if good business dealings, as in the instant case, will and does allow a saving to the county, I am of the the opinion that same may be done legally. Such a transaction would be an exception to the general rule."

I note that you have on hand several thousand dollars in the sinking fund lying idle and bringing no return to the county and that the county is having to pay interest on the entire outstanding bond issue; that in your judgment it would be to the best interest of the county to pay the premium and retire some of the bonds thereby saving interest on them until the maturity date which is in 1951.

Under the authority of the opinion to Mr. Hard referred to, it appears to me that if the Commissioners Court, upon the consideration of all the facts, is of the opinion that it is to the best interest of the county to retire these bonds at a premium and that the same will result in a substantial saving to the county, that you are authorized to take such action.

In answer to your second question, if you are authorized to pay the premium, it follows that the proper officer, which I presume is the Probate Judge, is authorized to issue the warant for the amount required for the retirement of these bonds.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 8, 1936.

Hon. J. W. Hamilton,
Tax Collector, Jefferson County,
103 Court House,
Birmingham, Alabama.

Section 178 of the 1935 Revenue Act which requires the Tax Collector to publish the list of insolvents in a daily newspaper twice during the month of July, does not violate the Constitution of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of April 30, 1936, in which you state:

"Section 178 of House Bill 324 (Revenue Bill) Regular Session 1935, requires the Tax Collector to publish twice during the month of July a 'list of insolvents' in the daily newspaper.

"The act of publishing this 'list of insolvents' over the name of the Tax Collector has the possibility of having a far reaching effect in that great injury might be done to the credit of individuals, firms, and corporations from which the Tax Collector may be unable to enforce the collection of taxes. The Tax Collector may be unable to locate some such taxpayers to enforce the collection of some who may be perfectly solvent, and in the event such taxpayer should be injured by such published report the Tax Collector might be sued for damages in so injuring the credit of such taxpayer, provided such section should prove to be unconstitutional."

You request my opinion:

"Whether or not this section is inviolation of the Constitution of the State of Alabama."

In reply, I beg to advise that I have carefully examined Section 178 of the 1935 Revenue Act, and it is my opinion that said section does not violate any of the provisions of the Constitution of Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May, 9, 1936.

Hon. C. R. Franks, Chairman,
Marion County,
Democratic Executive Committee,
Hamilton, Alabama.

Elections—Candidate for County Board of Education of Marion County must be resident of subdivision from which he seeks election in May Primary of 1936.

Opinion of Assistant Attorney General Small.

Dear Sir:

I have your letter of April 21, 1936, which is as follows:

"Will you please give me an opinion on the following question?

"You will recall that at the session of the Legislature just adjourned, a local act was passed under which the members of the County Board of Education would be elected from respective Districts of the County rather than from the County at large. You will note that the time for qualifying for this race in the May 5th primary, or rather the deadline for qualifying came before this act was passed and approved. Will you therefore, advise whether or not this act will apply to this election of

May 5th and June 9th, as we have one candidate of the three who lives outside the District in which the vacancy occurs, in the event the law applies in this election. That is to say, the Districting of the County under this act would include two of the candidates in this election while the other lives outside the District for which a place is to be filled under the provisions of this act.

"It is very important that we have your opinion before the May primary at the latest and sooner if you can possibly advise us before then and for this reason we shall appreciate it very much if you will either call or telegraph me on this matter."

In reply, I wish to advise that Acts of 1931, page 76, Section 9, provides as follows:

"Section 9. The name of no candidate shall be printed upon any official ballot used at any primary election unless such person is legally qualified to hold the office for which he is a candidate, and unless he is eligible to vote in the primary election in which he seeks to be a candidate and possesses the political qualifications prescribed by the governing body of his political party."

You will note that the language of this Section is specific and mandatory that "no candidate's name shall be printed upon any official ballot used in the primary election unless such person **is legally qualified to hold such office for which he is a candidate.**" (Emphasis supplied).

House Bill 257—Hill, approved March 31, 1936, provides in part as follows:

"Section 1. The Board of Education of Marion County shall be composed of five members, one of whom shall be a resident of each of the sub-divisions of the county hereinafter designated and described, and shall be elected by the qualified electors of the sub-division of his residence."

Section 2 (a):

"At the general election of 1936 one member shall be elected from, any by the qualified electors of sub-division No. 1, which shall comprise and include the following beats or precincts, viz: Nos. 7 (Hackleburg) 8 (Bear Creek) 9 (Kimbrough) and 10 (Howell)."

You will note that the qualifications of a candidate for holding the office of a member of the Board of Education of Marion County under the provisions of the above quoted House Bill 257—Hill, require residence of candidate in the district from which he seeks election.

In my judgment, the legislative intent is clear that the candidate in order to be qualified for the primary and for holding the office to which he seeks election must be elected by the qualified voters of the subdivision of his residence. It is, therefore, my opinion that unless the candidate is a resident of the subdivision from which he seeks election, he is not legally qualified to hold the office as of the date of the May primary, the effective date of House Bill 257—Hill being March 31, 1936 and prior to the date of the May primary.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 9, 1936.

Hon. H. M. Brock,
Tax Collector, Fayette County,
Fayette, Alabama.

Tax Collector—Section 178 of the 1935 Revenue Act requires the Tax Collector to publish only the list of insolvents in a newspaper twice during the month of July.

The costs incurred in said publication are to be paid by the State, County and School District in proportion to the rate of taxation.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 1, 1936, in which you state:

"On page 87, Section 178 of the 1935 Revenue Act, the law provides that the Tax Collector shall cause the list of insolvents to be published during the month of July, but does not specify as to who shall pay the expense of this advertising."

You request my opinion.

"Please advise as to whether this means the list of insolvents only or does it means to cover the list of insolvents, errors and exemptions also.

"Who is to assume the cost of this advertising and from what fund shall it be paid?"

In answering your first question, it is my opinion that you are only required to publish the "list of insolvents" and are not required to publish the "list of errors in assessments."

The statute is very plain and is not ambiguous in any respect.

I wish to call your attention to the following part of Section 178:

"* * * The Tax Collector shall cause the said 'list of insolvents' to be published twice during the month of July following the submission thereof to the June term of the Court of County Commissioners or other Court of like jurisdiction.* * *"

In answering your second question, it is my opinion that the costs incurred in said publication should be paid by the State, County and School District in proportion to the rate of taxation.

I suggest that when you receive the bill for publishing the list, that you send same to Hon. Chas. W. Lee, State Comptroller, who will apportion the costs.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 13, 1936.

Hon. Henry S. Long, Chairman,
State Tax Commission,
Capitol.

Taxation—Excise tax on financial Institutions. In determining net income by which excise tax is measured, dividends paid to Reconstruction Finance Corporation, a preferred stockholder, are not deductible.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter stating:

"We have several assessments for Excise Taxes being held up pending the settlement of several points with reference to the Excise Tax Law, and the most important question affecting these returns is whether or not a bank may take as a deduction, dividends paid the Reconstruction Finance Corporation on preferred stock held by the Reconstruction Finance Corporation.

"You will find the very interesting decision of the United States Supreme Court rendered on February 3, 1936, the Baltimore National Bank versus the State Tax Commission of Maryland, reported in Volume 80 No. A, Advance Opinions No. 283, Page No. 388.

"We are also sending you a copy of the Act of Congress described as Public—No. 482-74th Congress, Senate 3978, approved March 20, 1936.

"It would be appreciated if you would give us prompt action on this opinion, as several assessments are being held up awaiting a final decision on this point."

In reply, I beg to advise that in my judgment the only deductions allowable from net income for purposes of measurement of the amount of excise tax due are those given by the Alabama Statute. (Sec. 346.1(b)).

The excise tax levied by Article XII, Chapter I, Section 346.1 et seq. is an excise or privilege tax for the privilege of engaging in one of the businesses named, the amount of which is measured by the net income of the taxpayer, determined as provided in the Act.

It is not a tax on property or upon income, but is an excise on the privilege of conducting a financial institution. The net income is the mere measurement of the tax.

I have read the case of Baltimore National Bank v. Maryland to which you refer and the Act of Congress you enclosed, passed apparently to meet this decision. I do not see that this Act affects my conclusion. Net income for purpose of this tax is determined according to the methods set out and the deductions from gross income are specifically provided for. The Bank or other institution for the privilege sought pays a tax measured by its net income so arrived at.

The fact that out of its earnings it pays dividends to the Reconstruction Finance Corporation and other stockholders does not affect its net income, the basis of the Tax. The net income—certainly the net income for the purpose of this tax has been determined either actually or constructively

prior to the payment of dividends. As stated the tax is not a tax on net income but is an excise tax measured thereby and affects or can affect the payment of dividends only incidentally.

See Title Guarantee Loan & Trustee Co. v. State, 228 Ala. 636, 155 So. 305.
Educational Films Corp. v. Ward, 282 U. S. 379, 75 L. Ed. 400.
Pacific Co. v. Johnson, 285 U. S. 2180, 76 L. Ed. 893.
Cf. Union Bank & Trust Co. v. Blan, 229 Ala. 180, 155 So. 612.
Union Bank & Trust Co. v. Phelps, 228 Ala. 236, 153 So. 644.

I therefore conclude that dividends paid to the Reconstruction Finance Corporation are not deductible, in arriving at the net income by which the excise tax is measured.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

May 13, 1936.

Hon. John C. Arnold, Member,
House of Representatives, Jefferson County,
Birmingham, Alabama.

Peddlers—Party held not liable for license imposed by Schedule 146 of Revenue Bill of 1935 under facts stated.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of April 25, 1936, in which you request my opinion as follows:

"I have a client who is a merchant dealing in general merchandise who has routes he makes each week, buying chickens and eggs. On these routes he takes orders for feed, etc. which he hauls direct from his store to his customers.

"He has received a citation to pay a peddlers license. I would like to have your ruling as to whether under the present circumstances he would be subject to peddlers license."

In my opinion your inquiry should be answered in the negative.

I assume that the party mentioned in your inquiry after taking the orders for feed etc., on his chicken and egg buying trips, returns to his place of business with such orders and that he does not make delivery or fill the order without so returning.

The words "transient vendor or peddler" are defined in Schedule 146 of the Revenue Bill of 1935 as follows:

"(a) All persons commonly and generally termed 'peddlers' and falling within the usual and commonly understood definition of 'peddler'; or (b) all persons acting for themselves or as an agent, employee or salesman, or in any capacity for another whether as owner, bailee, or other custodian of goods, wares and merchandise, going from person to person, house to house, or place to place and selling or offering to sell, other than to a retail merchant for resale, goods, wares and merchan-

dise; or (c) All persons who do not keep a regular place of business, open at all times in regular business hours at the same place, going from person to person, house to house, or place to place, or from town to town and selling or offering for sale, other than to a retail merchant, goods, wares and merchandise which they carry with them and who deliver the same at the time of or immediately after the sale; or (d) All persons who go from person to person, house to house, place to place, soliciting orders, other than from a retail merchant for resale, by exhibiting samples or taking orders and thereafter making delivery of the goods or filling the order, without carrying or sending the order to the permanent place of business. * * * * *"

You will note that it is not the purpose of this schedule to impose a license on persons engaging solely in soliciting orders for the sale of goods, wares and merchandise. Accordingly, in my opinion, the merchant concerning whom you inquire, should not be cited for peddler's license.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 13, 1936.

Hon. J. Lee Smith,
Judge of Probate
Chilton County,
Clanton, Alabama.

Definition of "trailer" in Section 1397 (87) held not to include semi-trailer.

Not unlawful for owner of truck with semi-trailer to permit employees engaged in operation and business of said truck to ride in body of same.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 1, 1936, in which you request my opinion as follows:

"Section No. 1397 (87) Alabama Highway Code of Michie's Alabama Code of 1928, sub-section 'D' provides that no trailer of any kind shall be used for the hauling of passengers.

"To state a hypothetical case, an owner of a truck with a semi-trailer is operating said truck along the public highways of Alabama and said owner has employed on said truck two men whose duty it is to help load and unload and to perform any and all necessary duties in the operation of the truck, and who often ride on the body of the truck or in the rear end of the body of the truck for the purpose of looking after the cargo or performing any other duties that might be necessary.

"Will you please advise me whether or not the word trailer as used in sub-section 'D' would include a semi-trailer as defined in sub-section 'H' of Section No. 1397 (49) Michie's Code, and second, whether or not a passenger as used above would include employees of the owner of said truck as stated in the above hypothetical case. To state the matter otherwise, would it be a violation of the law for an owner of a truck

with a semi-trailer to permit his employees engaged in the operation and business of said truck to ride in the body of said truck?

"A definition of the word 'passenger' will be found in Babbitt Motor Vehicle Law, 4th Edition, page 1149, and you will also find cited therein two Alabama cases, Strickland v. Davis, 221 Ala. 247, 128 So. 233, and Wurtzburger v. Oglesby, 222 Ala. 151, 131 So. 99.

"I notice that the highway patrolmen are making some arrests for the purported violation of said section and I would appreciate your advising me on this at your earliest opportunity."

In answering your inquiry, I call your attention to the fact that the sections, concerning which you inquire of the Alabama Highway Code are penal in nature and as such must be strictly construed. 59 Corpus Juris 1113, n. 22.

In my opinion the word "trailer' 'as used in sub-section D of Section 1397 (87) does not include a "semi-trailer" as defined by sub-section H of Section 1397 (49) of Michie's Code of 1928.

Section 1397 (49) g, defines "trailer" as:

"Every vehicle without motive power designed for carrying property wholly on its own structure and for being drawn by a motor vehicle."

A semi-trailer is given a definition which distinguishes it from a trailer. We note that a semi-trailer is:

"Every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another vehicle."

A comparison of these definitions leads to the inevitable conclusion that it might as well be said that the term "trailer" includes a road tractor (defined in Subsection f) as to say that it includes a semi-trailer, which the legislature has seen fit to give a distinct identity of its own, separate and apart from that given a trailer.

In answer to your second inquiry, it is my opinion that it would not be a violation of the law for the owner of a truck with a semi-trailer to permit his employees engaged in the operation and business of said truck to ride in the body of said truck. I believe that the answer to your first inquiry is conclusive of this point.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 13, 1936.

Hon. J. W. Brock,
Clerk and Register,
Circuit Court, Coffee County,
Enterprise, Alabama.

Costs—When paid—

If a defendant is convicted and sentenced to the penitentiary or to hard labor for the county and is delivered to the Convict Department, the cost should be paid even though the defendant dies before the sentence is complete and the fact that his case is pending before the Su-

preme Court or Court of Appeals at the time he dies could make no difference.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 27, 1936, in which you request my opinion as follows:

"At the request of Mr. Purifoy, Examiner of Accounts, am writing for an opinion as to payment of costs in cases where defendent died in penitentiary or at hard labor while his case was pending in the Court of Appeals."

Answering your request I call attention to Section 3670, Code of Alabama, 1923, which is as follows:

"Clerk must swear to bill of costs and forward to president of the board; limit; how paid.—After such conviction, the clerk of the court in which the conviction is had, shall make out a bill of the costs in the case, containing no items not enumerated in the preceding sections; he shall make oath to the correctness of each item of said bill, and that the same is a legal charge against the defendant; he shall forward the bill of costs to the president of the Board or the officer discharging his duties, who shall carefully examine the same, and if found correct, he shall request the state auditor in writing to draw his warrant upon the state treasurer for the payment of said bill to said clerk out of the convict fund. No costs shall be paid until the convict has been delivered to the penitentiary officials, and, where a convict is sentenced in more than one case, the costs in the succeeding cases shall be paid when he is delivered to such officials."

From the above section, you will note it says:

"No costs shall be paid until the convict is delivered to the penitentiary." Naturally, the cost must be paid when he is delivered. Therefore, if the convict has been delivered and is in the hands of the Convict Department and dies or escapes, this could make no difference as the officers of the county have complied with the terms of the statute so far as they are concerned. The costs should be paid.

The fact that the case is pending in the Supreme Court or Court of Appeals and while so pending the convict dies or escapes, could make no difference as under the law the convict has a right to serve pending appeal.

What I have said above applies with equal force to hard labor cases, as Section 3675, Code of Alabama, 1928 makes the law governing penitentiary cases applicable in misdemeanor cases.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936.

Hon. W. H. Quillin,
Judge, Law and Equity Court,
Franklin County,
Russellville, Alabama.

Solicitors—Solicitor of Law and Equity Court of Franklin County entitled to extra compensation during term for performing new and additional duties under Local Act No. 120, S. B. 168, approved April 15, 1936.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of April 27, 1936, in which you request my opinion as follows:

> Is Act No. 120, S. B. 168, approved April 15, 1936, which increases the salary of the Solicitor of the Law and Equity Court of Franklin County, applicable to the present incumbent solicitor?

I am of the opinion that your inquiry should be answered in the affirmative.

The Law and Equity Court of Franklin County was created by Act No. 404 H. 808, approved September 28, 1923 (Local Acts 1923, p. 272). Sections 7, 8 and 9 deal with the office of the Solicitor of said county. Section 9 fixes his compensation at $1200.00 per annum. His qualifications and duties are prescribed by Sections 9 and 10.

The 1936 Act in question increases the salary of the Solicitor to $1500.00 per annum. Section 2 of said Act provides as follows:

> "Section 2. In addition to the duties now required by law of the Solicitor of the Law and Equity Court of said county, he shall, when not otherwise engaged in the performance of his official duties, assist the Circuit Solicitor in the prosecution of criminal cases in the Circuit Court of said county, when requested so to do by said Circuit Solicitor."

The question then presents itself as to whether or not the duties imposed by the above quoted section are such new and additional duties as to allow an increase in the compensation of the incumbent Solicitor during his present term of office. In other words, does the instant case come within the inhibition of Section 281 of the Constitution or the exception as stated in **Tayloe v. Davis**, 212 Ala. 282, 102 So. 433.

In an opinion of this office rendered to the Solicitor of the Law and Equity Court of Franklin County on October 11, 1930, the 1923 Act in question was construed as to the duties of the Solicitor. Said opinion held that the Solicitor was required to attend all sessions of the grand jury which may be held in the Circuit Court of Franklin County, but that he was not required to prosecute or assist in the prosecution of any cause in the circuit court. Said opinion further held that the Solicitor was not required to prosecute any cause in any court except those which were triable in the Law and Equity Court of Franklin County. In other word, said opinion held that the Solicitor of the Law and Equity Court of Franklin County was not required to perform the duties of solicitors in general prescribed in Chapter 232 (Sections 5495-5528) of the Code of 1923. (See also Douglas v. Powell, 130 Ala. 580).

The premises considered, it follows that the duties imposed on the Solicitor of the Law and Equity Court of Franklin County by Section 2 of the 1936 Act, are such new and additional duties as to allow the present incumbent to receive the additional compensation provided therein.—**Tayloe v. Davis,** supra; **State v. Henry,** 224 Ala. 224, 139 So. 278.

Yours very truly,
A. A CARMICHAEL,
Attorney General.

May 15, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Attention: Mr. Shaffer

Fine and Forfeiture Fund—Clerk and Sheriff not entitled to claims against, in county court, where nolle prosequi is entered in felony cases.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your request for information as follows:

"Please give me an opinion as to whether the clerk and sheriff are entitled to have their fees paid from the fine and forfeiture fund in felony cases placed on the county court docket where a nolle prosequi is subsequently entered in said county court."

In my opinion your inquiry should be answered in the negative.

It has been held in Swindle vs. Crocker, 217 Ala. 199, 115 So. 252, that only those fees expressly provided by law may be taken by the clerk in criminal cases. This applies with equal effect to fees of the sheriff. It is not contemplated that the fine and forfeiture fund should be liable for claims on preliminary hearing where the defendant is discharged.

Section 3755 of the code of Alabama 1923 is the only section of the Code which allows any costs or fees to officers in preliminary proceeding. It certainly allows none in case the defendant is discharged.

Biennial Report of Attorney General 1922-1924, p. 131.
Biennial Report of Attorney General 1918-1920, p. 524.

The opinion to Hon. H. W. Clayton, Clerk of Circuit Court, Marshall County, Guntersville, Alabama, January 18, 1936 (Quarterly Report of Attorney General, Vol. II, p. 58) is hereby overruled in so far as it is in conflict with this opinion.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936.

Hon. Saxon P. Poyner,
Judge of Probate,
Houston County,
Dothan, Alabama.

Boards of Revenue or Commissioners Courts may levy special tax under Section 215, Code of Alabama, 1923, to purchase lot on which to erect jail or other public buildings.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 30, 1936, in which you request my opinion as follows:

"Kindly refer to Section 213 of the Code of Alabama of 1923 which gives the Court of County Commissioners authority to levy and collect a special tax of one-fourth of one per cent per annum for the erection, construction and maintenance of necessary public buildings, etc."

In answering the above, I call your attention to Section 213, Code of Alabama, 1923, which is as follows:

"213. Special Tax for county buildings, bridges and roads.—The Court of County Commissioners or other governing body of like jurisdiction in any county in this state, may levy and collect such special taxes as it may deem necessary not to exceed one-fourth of one per centum per annum for the purpose of paying any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public buildings or bridges, or incurred for the erection of public roads since the 28th day of November, 1901, or that may hereafter be created for the erection of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected."

I also call your attention to Section 215 of the Constitution of 1901, which is as follows:

"No county in this state shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one half of one per centum; providing, that to pay debts existing on the sixth day of December, eighteen hundred and seventy five, an additional rate of one fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided, further, that to pay any debt or liability now existing against any county incurred for the erection, construction or maintenance of the necessary public buildings or bridges or that may hereafter be created for the erection of necessary public buildings, bridges or roads, any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected."

The Section of the Constitution above referred to and the Section of the Code cited above are almost identical.

Under the above quoted Section, I am of the opinion that you may levy this special tax and it may be used for purchasing a lot on which to erect the annex to the Court House to be used as a jail. You will note this Section says: "or that may hereafter be created for the erection of public buildings, bridges or roads; which taxes so levied and collected shall be applied exclusively to the purpose for which the same are so levied and collected."

Littlejohn v. Littlejohn, 195 Ala. p. 614.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936.

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Licenses—Person who goes from place to place and buys livestock, which he resells to the stockyard is a livestock dealer as defined by Act No. 190, H. 106, approved April 21, 1936, (General Acts 1936, Extra Session) and should pay the license required under said Act.

Person who manufactures shingles and sells them to dealers is not a transient dealer under Schedule 147 of the 1935 Revenue Act.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of March 14, 1936, which is as follows:

"Please advise us if a person who buys livestock and sells them to the stockyards in Montgomery is required to buy a license as a transient dealer.

"Also a person who manufactures shingles and sells them to dealers."

In my opinion the person who buys and sells livestock is a livestock dealer as defined by Section 1 of Act No. 190, H. 106, approved April 12, 1936, (General Acts 1936, Extra Session) and should pay the license required under said Act. Section 1 is as follows:

"Section 1. Every person, firm, association or corporation engaged in the business of buying cattle, sheep, goats or hogs for resale or slaughter or who engages in the business of transporting, hauling or driving cattle, sheep, goats, or hogs along any public road or highway of Alabama, for resale, to market or for slaughter, or who engages in the business of slaughtering such livestock shall be deemed to be a dealer for the purpose of this Act."

For your information, I enclose a copy of Act No. 190.

In my opinion your second question should be answered in the negative.

I have carefully examined Schedule 147 of the 1935 Revenue Act, and it is my opinion that a person who manufactures shingles and sells them to

dealers does not come under this schedule as said person is a manufacturer and not a transient dealer.

Yours very truly,
A. A. CARMICHAEL,
Attorney General

May 15, 1936.

Hon. R. H. McAnelly,
Probate Judge, Jackson County,
Scottsboro, Alabama.

County Warrants—

Under the form of the warrant submitted the resolution of the Court of County Commissioners and all the facts, warrants issued by Jackson County as described, held to be obligations of the County and in the payment thereof, are not limited to the gasoline tax received by the County from the State.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 11th stating:

"During the year 1935, Jackson County was indebted to various concerns for the purchase price of road machinery, parts, supplies and corrugated culvert material. The claims of these creditors were regularly filed against the county and at various sessions of the Commissioners' Court resolutions were duly adopted auditing and allowing said claims and directing the issuance of interest bearing warrants payable out of the State gasoline tax of the County. In each resolution there was inserted the following paragraph:

" 'Resolved further, that so much of the revenues of said County of Jackson, out of the State gas tax as shall be necessary to pay said warrants, both principal and interest be, and the same is hereby pledged to the said (Creditor's name) for the purpose of paying said warrants when due.'

"The warrants, themselves, are upon the usual form of interest bearing warrant and recite that they are issued pursuant to an order of the Commissioners' Court but nothing is recited in the face of the warrants to indicate that they are secured by a pledge of the County's portion of the State gasoline tax. The warrants are past due and there are not sufficient funds on hand to pay them so a resolution was adopted authorizing the issuance of refunding warrants to retire the old warrants; the new warrants to be secured by a pledge of the full faith, credit and taxing power of the County and the promise upon the County's part, to set aside so much out of the gasoline tax each month to retire the new warrants at maturity. The minutes of the meeting at which this resolution was adopted have not been approved. Now, if the indebtedness represented by the old warrants constitutes a part of the Constitutional debt limit of the County, the County, has now reached its debt limit, however, if the old warrants are not a part of the debt limitation of the County, it would seem that the issuance of the refunding warrants would bring the indebtedness within the purview of

the Constitution and the County would thereby be prevented from obtaining a loan from the P.W.A. for the construction of a new jail to replace the one recently condemned by the prison authorities.

"On June 27, 1929, your office rendered an opinion to the Probate Judge of Conecuh County, which opinion appears in the Biennial Reports of the Attorney General, Oct 1, 1928 to Sept. 30, 1930, at page 501, wherein it was held that such warrants as those sought to be refunded in this instance were void but that the indebtedness represented thereby was valid and constituted a part of the Constitutional debt limit. This opinion, I think, is sound in law and principle, however, on November 7, 1933, your office rendered another opinion to the County Attorney of Barbour County, which is found in the Biennial Reports, Oct. 1, 1932 to Sept. 30, 1934, at page 407, wherein it has been apparently held that warrants secured by a pledge of the gas tax of the County do not constitute a part of the Constitutional debt limit of the County. This latter opinion expressly overrules all former opinions upon the subject.

"In view of the foregoing facts, will you please advise me as follows:

"1. Are the warrants sought to be refunded what are commonly referred to as 'Gas Tax Warrants?'

"2. Are the warrants sought to be refunded void, or, are they legal and binding obligations upon the County?

"3. Are the warrants sought to be refunded to be included in arriving at the Constitutional debt limit of the County?

"4. If said warrants sought to be refunded do not now constitute a part of the Constitutional debt limit of the County, would the issuance of the refunding warrants, pledging the full faith credit and taxing power of the County as security therefor, bring the indebtedness represented by the old warrants within the Constitutional debt limit?

"5. If you are of the opinion that the old warrants, by reason of the pledge of the gas tax as security therefor are void, may such warrants be lawfully refunded by the County?"

You attach the following data to your letter: Minute entries showing the allowance of the claims and the order for issuance of the warrants; form of the warrant and also the minutes of the Board of date of April 21, 1936, authorizing the issuance of refunding warrants about which you inquire. I will take up your questions in seriatim:

In reply to question 1, I advise that the term "gas tax funds" is a loose term, but generally speaking I believe is intended to convey the thought that the particular warrant is payable out of the proceeds of the funds received by the counties from the levy by the State of an excise tax on gasoline Of course, if, as some counties do, a particular county levies a gasoline tax itself, the phrase is an indefinite one. In the expressions of opinion hereinafter made, I am assuming the "gas tax" or similar words mean the funds received by the county from the State.

The warrant which you attach states in part:

"The County of Jackson acknowledges itself indebted etc. * * *

> This warrant is issued pursuant to law and an order of the governing authority of the said County, who represent that all provisions of law have been complied with and that this warrant is legal in all respects."

The warrant is signed by the Judge of Probate and the several commissioners in their official capacity. It is payable at a future date and bears interest. On the face of the warrant there is nothing to indicate that it is other than a general obligation of the county. In fact, it is my judgment that the opening phrase: "The County of Jackson acknowledges itself indebted" is sufficient in itself to make it a county obligation.

However, reference must be made to the minute entries which authorize the issuance of the warrant. It is my judgment that in determining the nature and validity of the warrant, all proceedings relating thereto must necessarily be considered. The minute entry (Minute Book 8, p. 398) recites:

> "That Whereas Jackson County in indebted, and Whereas, the claim has been filed and examined and allowed, and it is deemed necessary to issue interest bearing warrants to cover it that the claim as audited and allowed as 'a just and valid claim **against said County'**."

After ordering the Probate Judge to draw his warrant specifying the amount, this provision appears:

> "RESOLVED FURTHER, That each of said warrants be signed by the Chairman and each member of this Court, as required by law, and that said warrants be registered by the County Depository as a valid and legal claim against said County of Jackson."

The concluding paragraph is as follows:

> "It is ascertained and hereby recited as a part of this order, that the total outstanding indebtedness of said County of Jackson, at the time this debt was created and including said debt, does not exceed three and one-half per centum of the assessed value for taxation of the property of said County of Jackson for the previous year, and is not in excess of one-half the income from taxation of said County for such previous year."

Without more, it would be clear, I think that the resolution of the Court recited an indebtedness of the County and the minutes ordering the warrant and the warrant issued acknowledged the County's indebtedness and promise to pay. There is though, this provision appearing in the minute entry:

> "FURTHER RESOLVED, That so much of the revenues of said County of Jackson out of the State Gas Tax as shall be necessary to pay said warrants, both principal and interest be, and the same is hereby pledged to said J. D. Pittman Tractor Company for the purpose of paying said warrants when due."

The contention is made that by the insertion of this provision the creditors are limited only to the gas fund out of which to secure payment of their claim, and that by this provision, the obligation is not a general obligation of the County, but only an obligation, if valid, against the gasoline fund.

It is my judgment that while this provision authorizes a method of payment it does not limit or defeat the clear purpose otherwise expressed of making the warrants obligations of the County. I therefore conclude that

the original warrant was an obligation of the County of Jackson and that the payment of the principal and interest as provided by the resolution out of the gas fund was merely as an aid or an additional method of payment and did not defeat the warrant as being an obligation of the County.

I think the foregoing probably answers your second question. You state in your letter that the County had not exceeded its constitutional debt limit at the time the warrants were issued. They being obligations of the County and the county being within its constitutional debt limit, I see nothing making their issuance beyond the power of the County.

In answer to your third question, the warrants being obligations of the County, it necessarily follows that they are to be included in arriving at the constitutional debt limit of the County.

The answer to your fourth question necessarily follows from the foregoing. The original warrants being a part of the debt of the County, and within the constitutional debt limit, the refunding warrants will necessarily be so, unless their issuance creates an indebtedness of the County in excess of the constitutional limit.

The answer to your fifth question is unnecessary by virtue of the foregoing.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 15, 1936.

Hon. H. E. Kendrick,
Tax Collector, Dallas County,
Selma, Alabama.

Property sold to city at tax sale prior to assessment date for State and County taxes and not redeemed is not subject to assessment for the years it is owned by the city, and where assessed, Tax Collector may have same allowed as error under Section 178 of the Revenue Act of 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 12th, in which you state:

"In preparing list of persons and property for advertisement for sale for State and County taxes for the tax assessment year as of October 1, 1934, I find the following condition exists in a number of cases:

"That certain pieces of property were sold to the City of Selma for city taxes or street improvements prior to the assessment date for State and County taxes and have never been redeemed from the city.

"That notwithstanding such sale to the city the property has been assessed upon information or otherwise to the former individual owners.

"Am I as Tax Collector authorized to report such property for allowance as a list of persons or property which has been 'overassessed or wrongfully assessed' as provided by Section 178 of the 1935 Revenue Act.

"The city claims that as the title to the property was in it, that the the assessments for State and County taxes made subsequent to the sale to the City were erroneous."

In reply I advise that in my opinion if the property was actually sold to the City of Selma prior to the date it was subject to assessment for State and County taxes, then such property would not be subject to assessment for State and County taxes for the assessment years subsequent to the date it was sold to the City. Of course, if in the meantime individuals had redeemed it from the City, it would again become subject to assessment.

Quarterly Report Vol. 1, October 1, 1935—January 1, 1936, p. 207.

The opinion holds that a valid sale for taxes passes the title to the State. I am of the opinion that the same conclusion applies to a valid sale for city taxes.

Under Section 91 of the Constitution the State may not tax the property of * * * municipalities. It therefore, follows that if the property was owned by the city, it was not subject to assessment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 16, 1936.

Hon. Walter K. McAdory,
Chief, Alabama Highway Patrol,
Montgomery, Alabama.

H. B. No. 125, enacted by the last Legislature, amending Section 51 of Act No. 347 of the General Acts of Alabama of 1927 does not amend, alter or change in any way the provisions of Section 8 of Act No. 58 (General Acts of Alabama 1932, p. 69); the speed of trucks, semi-trailers, trailers and motor vehicles used primarily for the transportation of property is governed by Section 8 of Act No. 58 of the General Acts of 1932.

Opinion by the Attorney General.

Dear Sir:

I beg to acknowledge receipt of your letter of April 29, as follows:

"I beg to call your attention to H. B. No. 125, approved April 21, 1936, which Act was passed at the last session of the Legislature. This Act, H. B. No. 125, purported to amend Section 51 of Act No. 347 of the General Acts of Alabama of 1927. An examination of the new Act (H. B. No. 125) discloses that the effect of the amendment is to eliminate subsection 8 of Section 51. In other words, the amended act simply eliminates the following sentence of Section 51: 'Forty-five miles an hour under all other conditions.'

"I now beg to call your attention to Section 8 of Act No. 58 of the General Acts of Alabama of 1932, which section deals with the speed of Motor vehicles used primarily for the transportation of property. Section 8, generally, deals with the size, weight, regulation of and speed of trucks, semi-trailers and trailers.

"I will appreciate it if you will advise me whether it was the intention of the Legislature, in amending Section 51, regarding the driving of a vehicle on a highway, to also amend Section 8 of the 1932 Act, supra. In other words, was it the intention of the Legislature in amending Section 51 to say that the speed of motor vehicles used primarily for the transportation of property should be the same as the speed of motor vehicles mentioned in Section 51."

I have examined H. B. No. 125 enacted by the recent Legislature, and I have also examined Section 51 of Act 347 of the General Acts of Alabama of 1927. I have noted subsection 8 of Section 51, and Section 8 of the 1932 Act, supra.

I find that the Legislature amended Section 51 by merely eliminating subsection 8, as follows: "Forty-five miles an hour under all other conditions."

You inquire whether it was the intention of the Legislature in eliminating subsection 8 of Section 51 to also amend Section 8 of the 1932 Act in such a way as to make the speed regulations of Section 51 apply to motor vehicles used primarily for the transportation of property, mentioned in Section 8.

It is my judgment that in eliminating Subsection 8 of Section 51, it was not the intention of the Legislature to disturb in any way any part of Section 8 of Act No. 58 (General Act of 1932). In Act No. 58 of the General Acts of Alabama of 1932, the Legislature treated the matter of speed of vehicles used primarily for the transportation of property separately. It appears clear from a reading of the entire 1932 Act, that it was the intention of the Legislature to deal specially and specifically with the matter of the speed of motor vehicles used primarily for the transportation of property. I am of the opinion that as regards trucks, semi-trailers, trailers and motor vehicles used primarily for the transportation of property, you and your force may continue, as regards speed to be governed by Section 8 of Act No. 58 (General Acts of Alabama 1932, page 69). There are very good reasons why the Legislature did not intend to disturb Section 8. The speed of trucks, semi-trailers and trailers, and motor vehicles used primarily for the transportation of property is a thing separate and apart from the speed of other types of motor vehicles that use the public highways.

It is my judgment that the amendment by H. B. No. 125 of Section 51 does not amend, alter or change in any way Section 8 of Act No. 58 (General Acts of Alabama 1932).

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

May 16, 1936.

Hon. T. A. Barnett,
Tax Collector,
Walker County,
Jasper, Alabama.

Property owned by the Jasper Homesteads, Inc., an agency instrumentality of the United States Government, on October 1, 1934 was exempt from taxation.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of April 17, 1936, in which you state:

"I wish to secure an opinion on the tax exemption of the Jasper Homesteads, Inc., which is now owned by The United States Government At the time the assessment was made, January 31, 1935, said property was owned by the Jasper Homesteads, Inc. However, on February 18, 1935, said Corporation transferred title of their property by deed to The United States Government, thereby claiming exemption on the 1935 taxes now due Walker County.

"Under the above circumstances, should the named Corporation be given exemption on said property for the tax year of 1935? An opinion at the earliest possible date will be appreciated."

It is my information that the Jasper Hamesteads, Inc. was a corporation owned, controlled and operated by the United States Government. If this be true, their property was exempted from taxation as of October 1, 1934. I am unable to tell from your letter whether the Jasper Homesteads, Inc. owned the property on October 1, 1934, the assessment date, or not. You merely state that the assessment was made January 31, 1935. If I am correct in assuming that the title to the property was in the Governmental agency on the assessment date, October 1, 1934, in the absence of a specific Federal Statute authorizing its taxation by the date then the assessment was in error and upon proper report you should be allowed the item as an error in assessment under provisions of Section 178 of the 1935 Revenue Act.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 16, 1936.

Hon. H. B. Gantt, Sheriff,
Covington County,
Andalusia, Alabama.

Suits in detinue—

Liability of sureties on detinue bonds. Sureties on detinue bonds, guaranteeing the successful prosecution of a suit or else agreeing to pay damages or costs that may accrue to the defendant are not liable for the costs by execution issued against them except after their liability has been judicially determined by suit or detinue bond.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 13, 1936, in which you request my opinion as follows:

"I respectfully request your opinion on the following:

"John Doe made an affidavit and bond in Detinue in the Circuit Court of Covington County, Alabama. This suit was against Richard Roe and for recovery of personal property. Sheriff of Covington County took into his possession the property described in the writ. This

property was later replevied by defendant. Case came up for trial and was won by defendant. Execution was issued against plaintiff and sureties on the bond. A copy of this bond is hereby enclosed. Please advise whether or not the sureties John Smith and Tom Smith are liable for any of the cost in this case, the amount of cost being $93.10."

The copy of the bond on which you desire my opinion is simply a detinue bond required of the plaintiff in case he desires to take possession of the property sued for.

In this bond he agrees to pay the defendant all costs and damages for wrongful complaint, in case he fails to prosecute his case to successful end. Independent of this bond, the plaintiff would be liable for all costs for which execution could issue at once, but this is not true of sureties on the bond for the reason no judgment can be had against them in the original suit as they are not parties plaintiff but only sureties for cost and damages on the happening of certain contingencies.

How are we to know when these contingencies exist? Only when suit is brought on the bond and it has been judicially determined and until this time no execution can issue against the sureties on the original detinue bond. In other words there must be a judicial ascertainment that the covenant of the bonds in some particular have been breached, and this can only be done by suit on the bond. Orr v. Watson, et al, 9 Ala. App. 119; Foster v. Napier, 74 Ala. 393.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

May 20, 1936.

Hon. T. R. Snead,
Judge of Probate,
Cherokee County,
Centre, Alabama.

Judges of the various courts of Alabama are without power to remit fines or sentences or to grant probation in criminal cases.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 14, 1936, in which you request my opinion as follows:

"Will you please advise me whether or not the County Court Judge has the power or authority to remit a fine or any portion of a fine in a case of violating the Prohibition Law?"

Under the law as it now stands you are without power to remit the fine or to grant probation in any case, as the act so authorizing was held unconstitutional in the case of Montgomery vs. State (appealed from Lauderdale County Circuit Court) 163 So. 365.

Quarterly Report of Attorney General October-December 1935, page 243.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

May 21, 1936.

Hon. Henry Naish,
County Treasurer,
Shelby County,
Columbiana, Alabama.

Statutes—Act No. 88, H. B. 293 approved April 7, 1936 (Local Acts 1936, Extra Session) is a valid enactment and does not violate the Constitution of Alabama.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 8, 1936, which is as follows:

"I am enclosing herewith copy of Act No. 88, H. B. 293, approved April 7, 1936, (Local Acts, Extra Session, 1936) passed in the last session of the Legislature, applying to Shelby County. Please give me an opinion as to the validity of this Act."

In my opinion, assuming that Act No. 88, H. B. 293, approved April 7, 1936, (Local Acts 1936, Extra Session) was properly enacted, i. e., that all requirements regarding publication, reading, etc., have been complied with, the said Act is a valid enactment and does not violate the Constitution of Alabama.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

May 21, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Sheriffs—Compensation for feeding of prisoners governed by terms of Act No. 203, approved July 10, 1935, regardless of the fact that warrants issued may exceed amount prescribed in General Appropriation Bill, Act No. 373, approved September 6, 1935.

Opinion by the Attorney General.

Dear Sir:

This is to acknowledge receipt of your letter of March 27, 1936, which is as follows:

"I respectfully request that you reconsider my question of October 17, 1935 as to whether H. B. 317, approved July 10, 1935, makes a direct appropriation or not.

"You rendered an opinion to me dated November 20, 1935."

You also desire an opinion as to the effect the 1935 Appropriation Bill, fixing a stipulated appropriation to be used for feeding of prisoners, has on the so-called "Feed Bill", approved July 10, 1935.

Section 4828 of Article 2 of Chapter 168 of the Code of Alabama of 1923, provided that sheriffs for preparing and serving food should be paid a certain amount each day for each prisoner incarcerated.

In 1932 the General Appropriation Bill (General Acts, 1932, p. 325) fixed an appropriation of $185,000.00 per year. This appropriation covered the fiscal years ending September 30, 1933, 1934 and 1935. On July 10, 1935, the Governor approved Act No. 203, H. B. 317 (General Acts 1935, p. 595), which repeals Section 4828, and at first blush, this Act appears only to increase the scale of compensation to be paid the sheriffs for the feeding of prisoners.

On September 6, 1935, the Governor approved Act No. 373, H. B. 249 (General Acts 1935, p. 792, 798) in which Act the sum of $175,000.00 per year is appropriated for the feeding of prisoners for each of the four fiscal years ending respectively September 30, 1936, 1937, 1938 and 1939.

Your inquiry resolves itself into two questions:

First, a reconsideration of our former opinion wherein we held that you could not legally issue warrants to sheriffs for compensation for the feeding of prisoners for the fiscal year 1934 to 1935 in excess of the sum specifically appropriated for the feeding of prisoners in the 1932 Appropriation Bill, even though the 1935 "Sheriffs' Feed Bill" increased the amount of compensation to be paid to the sheriff for the feeding of prisoners.

Second, you desire to know whether or not in the fiscal year 1935-1936 you may issue warrants only to the amount of $175,000.00 as set out in the 1935 Appropriation Act, supra, or whether you must draw warrants in favor of the sheriffs to cover the allowance to them for preparing and serving food to prisoners as provided in H. B. 317, approved July 10, 1935 (Sheriff's Feed Bill), even though to do so would cause you to issue warrants in excess of the sum of $175,000.00.

In the case of Nichols v. Comptroller, 4 Stew. & Porter, p. 157, appears the following language:

> "It is conceded that no money can be drawn from the treasury, but in pursuance of an appropriation made by law, but it is not necessary, that there should be an act passed annually, for the appropriation: if there is a general law, fixing the salary, requiring it to be paid at the treasury, annually, this is sufficient."

In the case of Reynolds, Auditor, v. Taylor, 43 Ala. p. 420, it was held that subsequent statute, merely appropriating a less sum than that fixed as the salary by the general statute would not operate a repeal by implication of the latter.

Headnote 2 in the case of Riggs v. Brewer, 64 Ala. p. 282, is as follows:

> "The annual salary of the marshal and librarian of the Supreme Court being fixed at $2,000 by the general statute (Code Section 586); while the subsequent law, making appropriations for the fiscal years 1879 and 1880, appropriated 'for compensation of the marshall and librarian $1,500 in each year, in all $3,000', which appropriations were continued in force until the 1st January, 1881, while the fiscal year ends on the 30th September in each year; and it was further declared that these appropriations 'shall not be construed to be in addition to appropriations for the same purposes' made by any other laws; held that

the marshal and librarian was not, during the years 1879 and 1880, entitled to draw more than $1,500 as his annual salary."

In the case of Abramson v. Hard, 229 Ala. pp. 2, 9, appears the following language:

"Under prior rulings of the court no appropriation act was necessary, the Legislature having fixed the amounts of the salaries in Act No.138 and provided the method of payment. In the case of Nichols v. Comptroller, 4 Stew. & Porter, 154, page 157, the court laid down this rule, saying: * * * It is conceded that no money can be drawn from the treasury, but in pursuance of an appropriation made by law, but it is not necessary, that there should be an act passed annually, for the appropriation: if there is a general law, fixing the salary, requiring it to be paid at the treasury, annually or quarter annually, this is sufficient."

From the cases just referred to, it appears that where an appropriation bill fails to appropriate sufficient money to pay the salary of an officer, which is fixed by another general statute, that the subsequent appropriation bill does not affect the officer's right to the salary prescribed by the prior general statute unless said subsequent appropriation bill evidences an intention to do so as was done in the case of Riggs v. Brewer, supra. However, in order to answer that part of your inquiry dealing with the fiscal year 1934-1935, it is not necessary to consider the facts as set out in the Riggs case, in view of the fact that the Act prescribing the amount which the sheriff should receive for the performance of the particular service was enacted subsequent to the appropriation bill which sought to limit the amount which should be paid to the sheriffs for the performance of those duties.

We are, therefore, brought to a consideration of the question as to whether or not this Act No. 203, H. B. 317, approved July 10, 1935, increasing the allowance to which the sheriffs are entitled for the feeding of the prisoners, can be considered the fixation of a "salary" as that term was used in the cases heretofore referred to.

After reconsidering my opinion of November 20, 1935, wherein I held that the Act under consideration does not come within the rule laid down in the cases heretofore referred to, I have come to the conclusion that I was in error.

Act No. 203 prescribes definitely how much the sheriffs shall receive for preparing and serving food to each prisoner. The total amount which a sheriff receives on any particular day or month is, of course, dependent upon the number of prisoners fed on a particular day or during a particular month. This Act, however, must be read in conjunction with Sections 4830, 4831 and 4832, Code of Alabama, 1923, which are as follows:

"4830. MONTHLY STATEMENTS BY SHERIFF.—On or before the tenth day of each and every month the sheriff of each county shall furnish to the court of county commissioners, or board of revenue as the case may be, to the state auditor, and to the state prison inspector, an itemized statement in detail, verified by affidavit, giving a list of all state and county prisoners by name, race and sex, the offense charged, authority for committing, disposition of prisoner, if sentenced, date committed, date sentenced, date discharged, (and) the number of days in jail. The sheriff shall set out the amount of money actually expended for purchasing and supplying of all foodstuffs for feeding prisoners during the month immediately preceding."

"4831. EXAMINATION BY AUDITOR; WARRANT FOR PAYMENT.—Upon the receipt of said statement from the sheriff, it shall be the duty of the state auditor to examine the said statement thoroughly and carefully, and if the total expenditure for feeding state and county prisoners as contained therein does not exceed the amount allowed for feeding each state and county prisoner confined in said jail ,as provided in section 4827, he shall draw a warrant upon the state treasurer in favor of said sheriff for the amount expended for feeding said prisoners. But if the sheriff is on a salary basis, as provided for under an amendment to the constitution of Alabama, then in that event the state auditor shall draw a warrant on the state treasurer in favor of such county for the amount so expended. But if the said statement shows that the amount for feeding each state and county prisoner in said jail is in excess of the allowance as provided for in section 4827, then the state auditor shall draw his warrant on the state treasurer only for such amount as will cover the expenditure for feeding said state and county prisoners per day as provided for in section 4827. The state auditor shall also draw a warrant on the state treasurer in favor of the sheriff to cover the allowance to sheriffs for preparing and serving food to prisoners as provided for in section 4828. But if the sheriff is on a salary basis as provided for under an amendment to the constitution of Alabama, then in that event the state auditor shall draw a warrant on the state treasurer in favor of such county for such allowance for preparing and serving food to prisoners."

"4832. FORMS SUPPLIED BY PRISON INSPECTOR.—All records shall be kept and statement made on form prescribed and furnished by the state prison inspector and the state auditor."

When the sheriff has complied with the provisions of the sections just above quoted, the sum to which he is entitled is just as certain as is possible for a compensation based on this kind of service to be.

Under the rule laid down in the cases heretofore referred to, there can be no doubt that if Act No. 203 had provided that the sheriffs should be paid $5,000.00 per month for feeding prisoners, they would be entitled to receive that amount regardless of the provisions of the 1932 Appropriation Bill.

This being true, I am of the opinion that under the rule laid down in the case of State ex rel. Turner v. Henderson, 74 So. p. 344, you may legally issue warrants to the sheriffs of this State for the feeding of prisoners in accordance with the terms of Act No. 203, supra, when the sheriffs have complied with Section 4830 of the Code of Alabama of 1923.

In the Turner case, supra, it was said:

"Acts 1915, p. 719, authorizing the Attorney General to employ with the approval of the Governor necessary counselors and attorneys, Section 8 of which appropriates money sufficient to meet the expenses incurred under the Act, is a valid appropriation within Constitution 1901, Section 72, providing that no money shall be paid out of the treasury except upon 'appropriation' made by law, **though no definite sum or maximum which cannot be exceeded was thereby fixed.**"

I also call to your attention the case of Norcross v. Cole, State Comptroller, 189 Pac. p. 877, wherein the Court held:

"It is true that the Act in question does not name a given amount as a sum which was appropriated to pay the indebtedness, but the intention of the Legislature to incur the indebtedness, and to have it paid out of the State Treasury is made clear, and a method is provided whereby the exact amount to be expended in pursuance of the Act may be ascertained not later than ten days after the first Monday in March of each year. In our opinion, this is sufficient for that is certain which is capable of being made certain."

The answer to your second inquiry must necessarily be the same as the answer to your first inquiry unless the fact that the 1935 Appropriation Bill (enacted subsequent to Act No. 203) makes a material difference.

The cases of Reynolds, Auditor v. Taylor, and Riggs v. Brewer, supra, involve the exact question except that in the latter case a subsequent appropriation bill by specific and positive language superseded any other appropriation which might have theretofore been enacted. The case of Riggs v. Brewer did not overrule the former case of Reynolds, Auditor v. Taylor, but drew this distinction: In the former case there was no positive expression by the Legislature that the sum fixed in the Act fixing the salary, as was the case in Riggs v. Brewer.

In the 1935 Appropriation Bill, supra, I do not find any such expression as was contained in the case of Riggs v. Brewer, supra, and, therefore, I am of the opinion that the facts here under consideration are in accordance with those in the case of Reynolds, Auditor, v. Taylor. I am of the opinion, therefore, that I was in error in my former opinion and that during the present fiscal year you may issue warrants in accordance with the terms and provisions of Act No. 203, regardless of the fact that you might issue warrants in excess of the amount prescribed in the 1935 Appropriation Bill.

Yours very truly,
A. A. CARMICHAEL,
Attorney General,

May 28, 1936.

Hon. Coma Garrett, Jr.,
Judge of Probate,
Clarke County,
Grove Hill, Alabama.

Justices of the Peace—In Grove Hill, Alabama, Precinct 10, qualified electors are entitled to elect only two justices of the peace, although there are four voting places in said Precinct.

Justices of the Peace should be nominated in a party primary and elected on the first Tuesday after the first Monday in November in 1908 and every fourth year thereafter.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 9, 1936, in which you state:

"Grove Hill precinct, No. 10, has four voting places. In other words, we have precinct 10 box 1, precinct 10 box 2, precinct 10 box 3 and precinct 10 box 4. Is each voting place entitled to elect a Justice of the

Peace for that voting box? We have two Justices of the Peace elected for Grove Hill precinct but I am wondering if each voting box is entitled to a Justice of the Peace as already stated above.

"Also advise the proper time for the election of a Justice of the Peace. Is it necessary to have the Justice of the Peace nominated and then elected in November as other officers or is it only necessary to elect them in the general election?

"Your opinion will be appreciated."

In my opinion your first question should be answered in the negative.

The right to elect a justice of the peace is not predicated on the number of voting places, but on the precinct. In Precinct 10, there might be ten voting places, placed for the convenience of the voters, but the precinct would only be entitled to two justices of the peace.

I wish to call your attention to a part of Section 168 of the 1901 Constistitution of Alabama, and Section 8700 of the 1923 Code of Alabama, which are as follows:

"Section 168. In each precinct not lying within, or partly within, any city or incorporated town of more than fifteen hundred inhabitants, there shall be elected by the qualified electors of such precinct not exceeding two justices of the peace, * * *"

"Section 8700. Two justices for each precinct; term of office.—Within the limits of every election precinct there shall be two justices of the peace, elected as provided in the chapter on 'elections,' who shall hold office for four years until their successors are qualified."

For your information, I refer you to Biennial Report of the Attorney General, 1930-1932, p. 71, and the case of Wood v. Wood, 219 Ala. 523, 122 So. p. 835.

In answering your second question, it is my opinion that a justice of the peace should be nominated in a party primary and elected on the first Tuesday after the first Monday in November in 1908, and every fourth year thereafter.

I call your attention to Section 417 of the Code of Alabama, and a part of Sections 1 and 60 of Act No. 56, H. B. 73, approved February 25, 1931 (General Act 1931, p. 73) which are as follows:

"Section 417. County officers; when elected.—One coroner, county commissioners or board of revenue of whatever number composed, or courts or boards of like jurisdiction, one tax assessor, one tax collector, one county treasurer in all counties having a county treasurer, two justices of the peace and one constable for each election precinct shall be elected on the first Tuesday after the first Monday in November, 1908, and every fourth year thereafter."

(Section 1, Act No. 56, H. B. 73)

"Section 1. That a primary election, within the meaning of this Act, is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or party office. Primary elections are not compulsory. * * *"

(Section 60, Act 56, H. B. 73)

"Section 60. * * *(f) The words 'County office' or 'County officer' shall include members of County Executive Committees of political parties, and County treasurers, County Superintendent of Education, Probate Judge, County Commissioners or Members of Board of Revenue, Member of County Board of Education, Sheriffs, Tax Collectors, **Justices of the Peace, Constable and like officers.** * * *"

Your very truly,
A. A. CARMICHAEL.
Attorney General.

May 28, 1936.

Hon. B. H. Baker,
Clerk, Circuit Court,
Barbour County,
Clayton, Alabama.

The State Board of Administration is not responsible for the costs which accrue on an appeal where the defendant is convicted of a misdemeanor and sentenced to hard labor for the county, but such costs are payable out of the Fine and Forfeiture Fund of the county on return of execution "no property found" against the defendant.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 12, 1936, in which you request my opinion as follows:

"Are Clerks of the Courts entitled to pay by the State Board of Administration for making the transcript in Misdemeanor Cases to the Court of Appeals, in cases where the Defendant is sentenced to hard labor to pay the fine and costs and appeals? (See Section 3667). This Section has been adopted and approved by the State Board of Administration in reference to the payment of costs for all misdemeanor cases.

"Section 3670 makes it the duty of the Clerk to include all costs against said defendant."

My answer to your request is in the negative. It is true that Section 3667, Code of Alabama, 1923, sets out and regulates costs on the conviction and delivery of a convict to the State charged with felony, and is made applicable in hard labor cases by an Act approved Feb. 18, 1927 (General Acts 1927, p. 52). Here we find the following items of cost: "record for supreme court (per hundred words), fifteen cents". This section was originally written to apply only in penitentiary cases. The defendants sentenced to the penitentiary are not sentenced for costs but the State pays the costs up to $250.00, and the defendants term of servitude does not depend on the amount of costs, but in hard labor cases it is quite different where the defendant is sentenced to serve a certain number of days to pay the costs and an additional term of so many days to pay the fine. Therefore when defendant is sentenced in hard labor case he can only be sentenced for the costs accumulated up to the time of his conviction, and if he desires to take an appeal to the Court of Appeals his sentence is suspended and he is required to make an appearance bond or remain in jail. This appearance bond is simply that he and his surety guarantee that if the case is affirmed he will appear and

carry out the sentence of the court. In case his appeal is affirmed, and in the case of an affirmance, all he has to do is appear and surrender himself to begin his service. It can be seen at once that all the costs that have accumulated by the appeal since his sentence the defendant does not work this out in serving his sentence. Therefore, the State does not get his labor for this cost as the sentence does not include the same. Now, can it be said that the State must pay costs for which the defendant was not sentenced and for which it did not receive one hour of work? (Quarterly Report Attorney General—Oct. 1st-Dec. 31, 1935, p. 189). We think not. Then the question arises, how is this cost paid? The answer is out of the fine and forfeiture fund of the county on return of execution "no property found" against the defendant. I call your attention to Section 4039, Code of Alabama, 1923 as amended by an Act approved February 18, 1927 (General Acts 1927, p. 45), which is in part as follows:

> "It shall further apply to the fees of the officers of the trial court, arising on an appeal, in cases where the defendant has appealed from a conviction, the punishment fixed being otherwise than imprisonment in the State penitentiary, and the judgement of the trial court is affirmed, provided the defendant be first proved insolvent by the return of the execution "no property found".

The facts you set out make the case come within the purview of the above section.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 28, 1936.

Hon. J. T. Tracy, Sheriff,
Cherokee County,
Centre, Alabama.

Counties are not liable for fuel used and water used for preparing food for prisoners confined in jail but are liable for water used for bathing purpose and other sanitary purposes by the inmates of the jail.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 16, 1936, in which you request my opinion as follows:

> "The County Jail here is heated by a furnace in the jail proper, and for this furnace the County buys fuel. The water supply for the jail is obtained from the same pump that supplies the Courthouse and the Sheriff's residence. In the Sheriff's residence is a stove that is used to heat the water that supplies the jail with hot water. On this stove the meals for the prisoners are also prepared, and at the same time the water is being heated for the jail.
>
> "Please advise if the County should furnish the fuel for this stove in the Sheriff's residence and which is used to keep hot water in the jail?

"The Commisisoners Court of this County has refused to furnish fuel to be used in this stove. Please advise if I am required to furnish fuel at my own expense to furnish hot water for the jail."

The county is not liable for any items incident to preparing food and serving same to prisoners confined in county jail, such as fuel for preparing food, water used in connection with preparing such food. I call your attention to the case of Holcomb vs. Mobile County, 129 Ala. 77. Quarterly Report of Attorney General, Vol. I p. 334. I think, however, that your county is liable for hot water used for bathing and other sanitary purposes for the jail, but as stated above not for preparing food for prisoners.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

May 28, 1936.

Hon. George E. Stone,
County Treasurer, Mobile County,
Mobile, Alabama.

Act of 1909, p. 338 authorizing clerical assistance in the office of County Treasurer in certain counties held not repealed by adoption of Code of 1923.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 15, 1936, in which you request my opinion as follows:

"In the Acts of 1909, page 338, there is an act providing for clerical assistance in the office of the County Treasurer in all Counties having an assessed valuation of more than $50,000,000.00.

"The County of Mobile has as assessment considerably greater than this, and if the Act is still in effect, it applies to Mobile County. This is a **general** bill with restricted application.

"The Code of 1923, Chapter 1, Section 11, provides for the repeal of such acts, general in nature, as are not brought forward in the Code; but it further provides that the repeal of such acts as the above shall be "except as may be otherwise provided in this Code." (Last sentence of Section 11).

"The question is: Has the question of the repeal of this particular act been 'otherwise provided in this Code?'

"This Act is among those which concern the powers and duties of the Board of County Commissioners. In the Code of 1923, the Chapter dealing with the Commissioners Courts (Chapter 270, page 394, Vol. 3, Code of 1923) defines the various authority and duty of the Commissioners Court; and in Section 6755, it lists various causes to which the County can or must appropriate (including Subd. 12, 13, 15, 17, 18, 20, 23, etc.), but does not include the amount mentioned in the Act of 1909, page 338, above.

"But Section 6793, Article 6, Chapter 270, (part of the same chapter dealing with Commissioners Courts), provides, that no provisions in this

chapter shall—"repeal any law or statute which in terms is made applicable to a certain County or Counties of a given population,—or to certain Counties which have a **given valuation of property.**" (Italics ours).

"As there is only **one** Act, possibly two, which contains a 'given valuation of property' as a basis for enactment, the question arises: Does Section 6793 of the Code meet the proviso of Section 11 of the Code, and 'otherwise provide' that the Act of 1909, page 338, is still in force and effect?

"In other words, Section 11 repeals 'except as otherwise provided' in the Code. Section 6793, part of the Code, provides that nothing in that chapter shall affect or repeal a law such as the one in question, and evidently refers definitely to the Acts of 1909, page 338 as not being repealed.

"Putting the two together, is the Act of 1909, page 338, repealed, or is it still in effect?"

In my opinion Act 174, H. 365 (Acts 1909, p. 338) is still in effect, and it would be quite proper for the Commissioners Court of Mobile County to make an appropriation such as provided for in said Act, assuming, of course, that the assessed valuation in Mobile County exceeds the sum of $50,000,000.00.

Your attention is respectfully directed to Shepherd v. Clements 224 Ala. 1, 141 So. 255, wherein we find the following:

"We recognize the rule that the presumption is that a general act does not repeal a local statute, but, as has been well said, 'such presumption must give way to a plain manifestation of a different legislative intent.' The question is one of intention which may be made to appear by the subject matter with which the general act is concerned, by the surrounding circumstances, by other legislation on the same subject, and the purpose to be accomplished. Thus, where the clear general intent of the Legislature is to establish a uniform system throughout the state, the presumption must be that local acts are intended to be repealed."

Thus, we see the rule clearly recognized that where the intent of the legislature is clearly expressed to establish a uniform system of laws, as by the adoption of the Code of Alabama, local acts or general acts with local application not codified, are perforce repealed.

But, in the instant case, the situation is somewhat different. Section 6793 of the Code of Alabama of 1923 provides as follows:

"Statutes not repealed or affected by this chapter.—No provisions in this chapter shall affect or repeal any local laws or any law or statute which in terms is made to apply to a certain county or counties of a given population, or a given number of inhabitants, or to a given area, or to certain counties which have a **given valuation of property.**"

By this section the legislature has shown a clear and unmistakable intention that the provisions of the law as codified, dealing with Commissioners Courts, shall run hand in hand with Acts passed at an antecedent date anplicable to "certain counties which have a **given valuation of property.**"

The Act of 1909 p. 338 comes within the italicized provision of Section 6793, supra. It provides for assistance in the office of County Treasurer where the assessed value of property in the county, based upon the previous year's assessment, exceeds the sum of $50,000,000.00.

In my opinion, therefore, the provision of Section 6793 has the effect of keeping in full force and activity the Act of 1909, supra.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 2, 1936.

Hon. Walter K. McAdory,
Chief, State Highway Patrol,
Montgomery, Alabama.

Employe riding on trailer in line of duty is not a "passenger" within the meaning of Section 1397 (87) d of the Code of 1928 (Section 85 c, Rules of the Road), providing that "no trailer of any kind shall be used for the hauling of passengers."

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 6, 1936, in which you request my opinion as follows:

"Recently we have had occasion to make an arrest where a trailer was being used for hauling refrigerators and other freight and in so doing a negro was riding on the trailer for the purpose of holding said freight. His attorney claims that he was not a passenger, under the law, on said truck but was an employee and placed on the equipment as such.

"Under Section 85 of the Rules of the Road under paragraph C you will note that the law says 'no trailer of any kind shall be used for the hauling of passengers' and for that reason and the question involved, please submit to me at your earliest convenience your opinion as to what constitutes a passenger on a trailer."

In my opinion a person riding on a trailer as an employee and performing duties as such employee is not a "passenger" within Section 85 (c) of the Rules of the Road (Code of Alabama, 1928, Section 1397 (87 d) which provides that "no trailer of any kind shall be used for the hauling of passengers."

The word "passenger" has been defined generally by our Supreme Court in Birmingham Ry. L. & P. Co. v. Adams, 46 Ala. 267, 272; 40 So. 385 as meaning:

"One who travels in some public conveyance by virtue of a contract, express or implied, with the carrier, on the payment of fare or that which is accepted as an equivalent therefor. Penn. Ry. v. Price, 96 Ala. 256; RR. Co. v. Tanner, 41 S. E. 721 (Va.) 6 Words and Phrases Judicially Defined, 5218, 5219."

In Crider v. Yolande Coal and Coke Co., 206 Ala. 71, 89 So. 285, where the driver of defendant's truck was in the habit of picking up anyone who

happened to be going in the same direction, chiefly employes of defendant or others who worked in and about its mines, and where a party picked up by said driver was injured when accidentally thrown from the truck, it was held that the rider was not a "passenger."

The Court in this connection laid down the following definition:

> " 'Passenger' means one who by virtue of a contract puts himself in care of a carrier by whom he is accepted for transportation from place to place."

See also Birmingham Ry. Light and Power Co. v. Sawyer, 156 Ala. 199; 47 So. 67, holding that a section hand riding back and forth to work on defendant's car was an employee and not a passenger.

And see 10 Corpus Juris, 633, Section 1054 n. 81.

In view of the foregoing, it is my opinion, that the employee traveling on a trailer would not be a passenger within the meaning of Section 1397 (87) d. (Rules of the Road, Section 86 C).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 9, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Where the defendant confesses judgment with sureties for a misdemeanor, and execution is returned against the defendant and sureties marked, "No property found," the costs cannot be paid from the Fine and Forfeiture fund of the County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 13, 1936 in which you request my opinion as follows:

> "A defendant guilty of a misdemeanor is fined in County Court. He confesses judgment with one or more individuals acceptable by the Court as 'good and sufficient sureties' for the fine and costs. Demand is made on the sureties for the fine and costs and payment is refused. Execution is issued against the defendant and sureties and returned 'No property found.'
>
> "Can the Clerk and Sheriff make claim against the Fine and Forfeiture Fund for their fees in the case."

I do not think where there is a confession of judgment for fine and costs in a criminal case as provided by Section 5288 Code of Alabama 1923 and execution is returned "no property found" as to sureties and defendant, that the costs can then be made a charge against the Fine & Forfeiture Fund of your county. This, for the reason that this confession is for all intents and purposes a payment of such fine and costs. The defendant goes free when such confession is made as assuredly as he does when he pays such fine and

costs in money. See Ex parte 121 Ala. 327 (25 So. 563-564). When a defendant is convicted for a misdemeanor and fined, he has three alternatives which he may accept: First, he may presently pay; second, failing or refusing to do this, he may confess judgment for the fine and costs; third, under Section 5288, supra, failing to do either of the above, it becomes the duty of the court to sentence the defendant to hard labor for the payment of such fine and costs. When a confession is made under the section above cited, the criminal aspect of the case ends, and from here out it becomes a civil process, and the officers and all those entitled to costs must depend on the confession for their payment, and if it fails, those entitled to costs are without recourse. I am familiar with Section 4039, Code of Alabama 1923 as amended by an Act approved February 18, 1927 (General Acts of Alabama 1927, p. 45) which has to do with the Fine and Forfeiture Fund of the various counties and which provides among other things:

> "***or in which defendants have been convicted, and have been proved insolvent by the return of executions 'no property found.'"

From the above, you will note the paragraph says "where the defendants have been convicted" but does not go on to say, or confess judgment for fine and costs. If it contained this language, then, there could be no doubt that it would include a case of confession of judgment where execution was returned against the defendant and his sureties, but as it stands, it is my opinion that Section 4039, supra, does not cover cases such as you cited and that the costs cannot go against the Fine and Forfeiture Fund of the County.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 9, 1936.

Hon. R. E. Steiner,
Vice-Chairman,
State Docks Commission,
Montgomery, Alabama.

1. State Docks Commission has implied authority to advertise and pay for advertising in newspapers, magazines or periodicals in Alabama.

2. State Docks Commission is without authority to subscribe to the support of the Mobile Chamber of Commerce.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I am in receipt of your letter of May 15, 1936, as follows:

> "Your opinion is requested as to whether or not the State Docks Commission has the legal authority to advertise and pay for advertising, in newspapers in Alabama.
>
> "Also, whether or not the Docks Commission has a right to subscribe to the support of the Mobile Chamber of Commerce."

The State Docks Commission was created by Act. No. 303, General Acts 1923, at page 330, approved September 18, 1923, to give effect to the amendment to Section 93 of the Constitution of Alabama enabling the State "when authorized by appropriate laws, passed by the Legislature, to engage in the

work of internal improvement, of promoting, development, constructing, maintaining and operating all harbors or seaports within the State or its jurisdiction at a cost not exceeding $10,000,000.00.". The Act gives to the State Docks Commisison the authority and power to engage in the work which the above mentioned amendment to Section 93 of the Constitution provides the State may do, and the Supreme Court of Alabama has held that the State Docks Commission is the governing agency of the State through which the work authorized by the amendment to Section 93 of the Constitution is to be carried on. See State Docks Commission v. Barnes, 225 Ala. 403, State Docks Commission v. State, 227 Ala. 414.

Section 7 of the 1923 Act, supra, provides how the State Docks Commission shall operate all harbors and seaports within the State and the improvements and facilities authorized by the amendment to Section 93 of the Constitution, supra. This Section reads as follows:

> "The operation of all harbors and seaports within the state and the improvements and facilities hereby authorized shall be conducted in the name of the state docks commission. In such operation, the commission may contract such current indebtedness as is necessarily incident to the prosecution of the work in accordance with the terms of this article. The commission may adopt rules not inconsistent with the provisions of this article for the purpose of regulating, controlling and conducting the said operation."

This identical provision is found in Section 9 of the 1927 Act on the subject of the State Docks which is Act No. 1, General Acts 1927, at page 1, approved January 17, 1927.

I have carefully examined the later Acts of the Legislature pertaining to the State Docks Commission and find that none of them changed the authority and power of the Commission, which is described above.

Since the State Docks Commission is a creature of the Legislature, it has only the power and authority granted to it by its creator, either expressly or by necessary implication. Nowhere in the Act do we find any express authority for the State Docks Commission to advertise and pay for advertising in newspapers, magazines or periodicals in Alabama or to subscribe to the support of the Mobile Chamber of Commerce. Therefore, if the State Docks Commission has such authority, it is by necessary implication from some authority expressly granted to it. Let us see if we can find such implied authority.

As shown above, the State Docks Commission has the authority, among other things, to promote and develop all harbors and seaports within the State or its jurisdiction. "Promote" is defined in 50 Corpus Juris, 717, as follows: "To contribute to the growth, enlargement, or prosperity of; to forward; to encourage; advance; to further; ***"; while "develop" is defined in 18 Corpus Juris, 1031 in this manner: "*** to bring to light by degree; to disclose; *** to uncover or unfold; ***."

Advertising, judicially placed, in newspapers, magazines or periodicals in Alabama, explaining the advantages to be derived from the use of the facilities of the State Docks, would tend to "contribute to the growth, enlargement or prosperity of and to forward, encourage, advance and further" the work which the State Docks Commission is authorized to carry on; as well as "to bring to light by degree, to disclose, and to uncover and unfold"

this work. Therefore, it is my opinion that the express authority given the State Docks Commission to promote and develop all harbors and seaports within the State and its jurisdiction gives it authority by necessary implication to advertise and pay for advertising in newspapers, magazines or periodicals in Alabama.

I am unable to find any authority, either express or implied, which gives the State Docks Commission the right to subscribe to the support of the Mobile Chamber of Commerce. I do not think that we could infer by necessary implication, from the authority given to the Commission to promote and develop, that this is authority for it to subscribe to the support of the Mobile Chamber of Commerce. An analogous situation is dealt with by the Supreme Court of Alabama in the case of Stone v. State ex rel. Mobile Broadcasting Corporation in 223 Ala. 426. In that case, the Supreme Court held that the Board of Revenue and Road Commissioners of the County of Mobile had no authority to contract with the above mentioned Broadcasting Corporation to advertise the resources of the County notwithstanding the authority granted to County governing bodies by subdivision 23 of Section 6755 of the Code of Alabama 1923. The Court held the contract there made between the County Governing Body of Mobile County and the Broadcasting Corporation to be primarily for the benefit of the Broadcasting Corporation and not of the County of Mobile. Applying the reasoning there used to the proposition now before us, it is my opinion that a subscripton to the support of the Mobile Chamber of Commerce by the State Docks Commission would be primarily for the benefit of the Mobile Chamber of Commerce and not of the State Docks. I arrive at this conclusion, following the reasoning of the Stone case, supra, notwithstanding the fact I realize the Mobile Chamber of Commerce would advertise the facilities of the State Docks to some extent. Therefore, I advise you that it is my opinion that the State Docks Commission is without authority to subscribe to the support of the Mobile Chamber of Commerce.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 9, 1936.

Hon. S. W. Hawkins, Chairman,
Board of Registrars, Jefferson County,
Birmingham, Alabama.

Elections—Citizenship for voting purposes not acquired by service in United States Army or Navy alone.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of May 5, 1936, in which you request my opinion in substance as follows:

When a man enters the Navy from Alabama may he claim another place as his residence?

My understanding is that if he enters the Navy as a citizen of Alabama, he is a citizen of Alabama while he is in the Navy even though he does not even see Alabama. Can he claim any other place as his legal residence?

In reply, I wish to advise that the answer to your letter must be qualified. In my opinion, it is possible for one enlisted in the Army or Navy of the United States to acquire residence in a State other than the State in which he enlists, but to become a voter, there is involved more than the mere acquiring of a residence. I refer you to the case of In Re Green, 5 Fed. Rep. 145 in which the court said:

> "It is not doubted that a sailor or soldier of the United States can acquire a residence while in the service. He may purchase or rent a dwelling and so gain a residence as was the case in Ames v. Duryea, 6 Lansing, 155, and doubtless in other ways. But in order to gain a residence in an election district in this state for the purpose of voting, he must do more than simply live at a place within the district by the orders of his commanding officer. If he do no more than that he acquires no new residence thereby, and the place of his residence at the time of his enlistment continues to be his residence for the purpose of voting without reference to where he may be stationed."

The question of residence for voting purposes to avoid the payment of back poll tax at the original residence, involves both questions of law and fact. I refer you to an opinion of the Attorney General to Hon. C. D. Rutherford reported in the Quarterly Report of the Attorney General for the period of January to March, 1936 at page 74 and to the authorities cited therein. These questions of fact address themselves to the Board of Registrars and unless sufficient proof that residence for voting purposes is acquired in a foreign state, in my judgment, the Board of Registrars will have no right to re-register the applicant. If the Board of Registrars declines to re-register the applicant on the theory here announced, then of course, the applicant must pay back poll taxes as a prerequisite to voting.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 11, 1936.

Hon. L. W. Price,
Judge of Probate,
Conecuh County,
Evergreen, Alabama

1. Where party operating filling station with one pump later opens a second pump, he may procure license for second pump on the reduced amount authorized by schedule 67 of the General Revenue Act of 1935.

2. When such second pump is opened after April 1, the amount of such license is one half of the annual amount due for such second pump.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Please refer to Schedule 67, page 259, Revenue Law of 1935 and render an opinion at the very earliest possible date, as to the following:

"(1) May a person who has previously purchased a privilege license to operate one gasoline pump and who wishes to later purchase a license for an additional pump at the reduced price, be permitted to do so? In

other words, must he purchase the license for both the one pump and the additional pump at the same time to take advantage of the reduction in the second pump?

"(2) In case you write that he may purchase a privilege license for the second pump at a later date than that on which he purchased the first and still be allowed the reduction on same, may he purchase the license for the additional pump after April 1st, if the license for the first pump was issued before April 1st, at the half year rate? As an example, if he purchases a gasoline pump under above schedule and pays for the State $10.00 between October 1, 1935 and April 1, 1936, may he, after April 1, 1936 buy a privilege license for an additional pump for $3.75, that being the State's part only?"

In answer to question 1, I advise that in my opinion if the pumps are a part of the same filling station equipment, he is entitled to procure license for the second pump at the reduced price.

Answering question 2, if the license on the second pump is procured after April 1, he is entitled to the half years rate applying to such pump. While this question is not free from doubt, under the rule of strict construction of tax statutes, I am of the opinion that the foregoing is the proper construction.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. Roy Johnson,
Tax Assessor, Jefferson County,
Room 106 Court House,
Birmingham, Alabama.

Exemptions—Property owned by charitable organization is not exempt from ad valorem taxation, although the income from said property is used for charitable purposes.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowldege receipt of your letter of April 23, 1936, which is as follows:

"The Methodist Orphanage at Selma, Alabama, has two pieces of property in Birmingham, which properties were acquired through foreclosures on mortgages. The rents from this property, they say, are used entirely for the carrying on of the Orphanage. They are claiming exemption on Section No. 4 of their charter.

Please advise me if this property should be tax exempt."

In my opinion the property is not exempt from ad valorem taxation.

The Supreme Court of Alabama in construing the part of the statute exempting property used exclusively for religious worship, which also applies to property used for purposes purely charitable, held that the use of the property was the criterion in determining the exemption and not the owner-

ship.—**State et al. v. Church of the Advent,** 208 Ala. 632, 95 So. 3. See also Opinions of the Attorney General, May 1, 1931 to June 30, 1931, pp. 69 and 166, Vol. 4, (Office Edition).

An Act of the Legislature approved February 5, 1891, incorporated the Methodist Orphanage, and provided by Section 4, that:

"Section 4. Be it further enacted, That the real estate in and near Summerfield, in Dallas County, on which is situated the Alabama Methodist Orphanage, and other buildings, connected therewith, and other real estate elsewhere that may here be donated to said corporation, to enable it to carry on its said Orphanage, shall be exempt from all taxation so long as said property, or the rents, income and profits thereof, are used in maintaining and carrying on said Orphanage."

Section 10 of Article XIV of the 1875 Constitution of Alabama engrafted on Acts chartering private corporations liability to alteration and revocation by the Legislature. Section 10 provides as follows:

"Section 10. The General Assembly shall have the power to alter, revoke, or amend any charter of incorporation now existing, and revocable at the ratification of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of the State; in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation."

Section 238 of Article XII of the 1901 Constitution of Alabama is similar to the section, supra.

In my opinion the last part of Section 4 of the Act incorporating the Orphanage, which provided that, "*** and other real estate elsewhere that may hereafter be donated to said corporation, to enable it to carry on its said orphanage, shall be exempt from all taxation so long as said property, or the rents, income and profits thereof, are used in maintaining and carrying on said Orphanage," was expressly revoked by the 1935 Legislature of Alabama, when the Legislature passed Act No. 194, H. B. 324, approved July 10, 1935, (General Acts of 1935, p. 257), which provides in part as follows:

"Section 2. *** all property, real and personal, used exclusively for religious worship, for schools or for purposes purely charitable; provided, however, property, real or personal owned by any educational, religious or charitable institution, society or corporation, let for rent or hire or for use for business purposes, shall not be exempt from taxation, notwithstanding the income from such property shall be used exclusively for educational, religious or charitable purposes; ***"

"Section 374. The exemptions from ad valorem taxation granted in this Act are hereby declared to be exclusive and any laws or parts of laws, general, special or local granting or attempting to grant any exemption from ad valorem taxation, except as in this Act provided, are hereby specifically repealed."

See the case of State of Alabama v. Alabama Bible Society, 134 Ala. p. 632, 32 So. p. 1011.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. Frank M. Johnson,
Probate Judge of Winston County,
Double Springs, Alabama.

Registration—Voters' names entered at illegal registration should be purged as prescribed by law.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of May 14th, 1936 in which you request my opinion as follows:

"The Commissioners Court called the Board of Registrars together on the 13th day of April, 1936, under an Act of the 1935 Session of Legislature, which Act was not intended for the smaller Counties. This Act including only Jefferson County, the State will not pay for this ten day session of Registering voters.

"The Board of Registrars being called together on a date which the State cannot pay for, and a date which is not lawful, will the persons registered on that meeting of the Board, be legal voters, or should their names be erased from the Poll list, or should the Board of Registrars meet and strike their names from the Poll List?"

In reply, I wish to advise that in my opinion any illegal registration is void, and the voter's name should be purged from the list of qualified voters as prescribed by law in this connection. I wish to refer you to H. B. 171-Waldrep, approved April 21, 1936 which provides for the dates of the meetings of the Board of Registrars of your county and the purposes thereof.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. N. P. Tompkins,
Judge of Probate,
Tuscumbia, Alabama.

1. Licenses due by construction companies and contractors by Schedule 42 of Section 348, Acts 1935, p. 455 are not subject to half-year license provisions of Section 368, Acts 1935, p. 564.

2. When contractor obtains proper license in regard to orders or contracts accepted in one license year, he may actually complete work thereunder in later year without additional license in regard to those contracts.

Opinion by Assistant Attorney General Bibb.

Dear Sir:

I wish to acknowledge receipt of your letter of May 23, 1936, which is as follows:

"Please advise me whether a license can be issued after April 1st for a half year under Schedule 42 of Section 343 of the Revenue Act of 1935.

That is whether the price to be charged for the license should be half the amount of the annual license under this Schedule.

"Please also advise me whether a Contractor who has procured a license under this Scehdule 42 and who does not complete the contract during the license year may complete such contract after the license year expires without procuring a new license for the new tax year on the same contract.

"I would greatly appreciate a ruling from you on these two questions at your earliest convenience."

The license required of construction companies or contractors by Schedule 42 of Section 348 of the 1935 Revenue Act (Acts 1935, p. 455) is graduated according to the gross amount of "all orders or contracts accepted" during each year commencing on October 1st. You will also observe that this Schedule further provides:

"****; and when such contractor shall have obtained a license for any year for which he has paid a license tax of less than the maximum above prescribed, he shall not accept any contract or contracts during such year, the aggregate amount of which exceeds the maximum amount for which his license was obtained, unless and until he shall have paid such additional sum as will make the total license tax paid by him for that year sufficient to cover the aggregate amount of such contract or contracts as prescribed above; and unless he pays such additional sum he shall be deemed to be acting without a license."

By these clear and positive provisions the license required of construction companies and contractors by said Schedule 42 of Section 348 is removed from the half-year license payments contemplated in Section 368 (Acts 1935, p. 564, wherein, among other things it is provided:

"Section 348. Unless otherwise provided, if any business licensed by this Act shall commence after the first day of April in any year, the amount of the license or privilege tax shall be one-half the year's license or privilege tax. In all other cases the license shall be taken out for the full term of one year, unless a shorter term is fixed by the provisions of this Act."

Answering your second question, it is my opinion that since the license is graduated and fixed according to the gross aggregate amount of all "contracts or orders accepted" during the license year, where a contractor has paid his proper license with regard to all such contracts or orders accepted during the license year, he may thereafter complete the work thereunder in a later year without thereby becoming liable for an additional license in regard to these particular contracts.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. G. H. Howard,
Judge of Probate,
Elmore County,
Wetumpka, Alabama.

Fees—Probate Judges do not have to collect a fee for noting the change of ownership of automobile tags on the license record, as there is no law authorizing said fee.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of June 5, 1936, in which you state:

"I am informed that other Probate Judges are charging a fee for recording the change of ownership of automobile tags on the license record. I have not been charging this fee and I would like to have an opinion from you as to whether I have to collect a fee for this service."

In my opinion your question should be answered in the negative. There is no law authorizing a fee for noting the change of ownership of automobile tags on the license record.

An officer claiming a fee must point to specific authority giving him such fee.—**Quarterly Report of the Attorney General Vol. I p. 222.**

I refer you to Section 7255 of the 1923 Code of Alabama, which is as follows:

"7255. No fee charged unless expressly authorized.—The law of fees and costs must be held to be penal, and no fee must be demanded or received except in cases expressly authorized by law."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. Henry S. Long, Pres.
State Tax Commission,
Capitol.

Attention Mr. Harry Simon.

License—Cotton warehouses—Schedule 152 of the Revenue Bill of 1935 computed on total number of bales received during calendar year.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of April 20, 1936, in which you request my opinion with reference to Schedule 152 as follows:

"The license levied by this Schedule is computed on the number of bales stored in the preceding calendar year.

"Your opinion is requested as to whether or not this license is computed on the number of bales received at such warehouse during such calendar year, or,

"If the license is computed on the maximum number of bales in the warehouse at any time during the preceding calendar year."

In my opinion the license imposed upon cotton warehouses is computed on the total number of bales of cotton received at such warehouse during the calendar year.

The Schedule in question provides in part as follows:

"152. Each person operating a warehouse or yard for the storage of cotton for compensation shall pay a license tax to the State as follows: Every such warehouse storing not more than five thousand (5,000) bales in the preceding calendar year, twenty dollars ($20.00);***"

The language of the Schedule, supra, is clear in stating that every warehouse "storing" bales of cotton "in the preceding calendar year" shall pay a license. Nowhere can it be found that the license mentioned is to be computed on the "maximum number of bales in the warehouse at any one time."

Cf. Opinion of Attorney General, Biennial Report, 1926-1928, page 215. Opinion Attorney General, Biennial Report, 1930-1932, page 1048.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. B. S. Turrentine, Clerk,
Circuit Court of Limestone County,
Athens, Alabama.

Courts—Municipal Court of Limestone County held to have concurrent jurisdiction of courts of justices of the peace and county court.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"On December 21, 1935, I received a letter from Hon. Hamp Draper as follows:

" 'With further reference to the Municipal Court of Limestone County, I am still unable to construe the jurisdiction of that court to be other than a Justice Court, that is to say, costs and fees are to be taxed and collected as in Justice of Peace Court.

"I find that this Court was created by an Act of 1920, P. P. 171, amended by an Act of 1927, P. P. 39, and again amended by an Act of 1935, P. P. 27, but still I find no authority for costs other than as above stated and that amount not to exceed five ($5.00) dollars.

"If you wish an official expression on this subject, I would advise that you request an opinion to that effect but until this point has been ruled on, this Department will not accept for payment cost bills as in case No. 7784.'

"The Municipal Court of Limestone County operates as a County Court and the case referred to is an appeal case from that court to the Circuit Court, costs amounting to forty ($40.00) dollars.

"If you will give me an opinion on the jurisdiction of this court at your earliest convenience, I will appreciate it very much as our court convenes on the 23rd of March and we have several cases on the docket appealed from the Municipal Court of Limestone County."

In reply, I wish to advise that in my opinion, the jurisdiction of the Municipal Court of Limestone County is provided for by the Acts of 1931, page 167. Sections 2 through 6 of the 1931 Act, supra provide as follows:

"Section 2. Said court and the judge thereof shall have and exercise all of the jurisdiction power and authority, and shall perform all of the duties which are now or may hereafter be conferred or required by the general laws of the State of Alabama, on justices of the peace and justice courts,—the territorial limits of said jurisdiction to be coextensive with the limits and boundaries of Limestone County, Alabama, and the subject matter of said jurisdiction to be the same as now, or hereafter, given by law to justices of the peace in the State of Alabama.

"Section 3. And in addition thereto said court and the judge thereof shall have original and final jurisdiction, concurrently with the county court of Limestone County, of all misdemeanors committed within the limits of said county.

"Section 4. In all matters, things and cases in said court in which any justice of the peace of said county would have jurisdiction, said court shall be governed by the rules, practices and procedure—except as hereinafter excepted—that are now, or may hereafter be, prescribed by law for justices of the peace courts, and the costs and fees taxable in said court shall be the same as now, or may hereafter be, allowed by the general law of Alabama in justice courts; and in all matters, things and cases in said court where the court is exercising the jurisdiction conferred on it concurrently with county court, or such jurisdiction as is given to county courts, the rules, practices, procedure, costs and fees taxable, shall be the same as are now, or may hereafter be, required by the general laws of Alabama with reference to county courts,—except that in no criminal case where the charge is such as justices of the peace have final jurisdiction of under the general law of the State, shall any solicitor's fee be taxed as costs upon a conviction of the defendant.

"Section 5. Appeals shall be allowed from any judgment of said court to the circuit court of Limestone County, Alabama, where the trial shall be de novo, under same conditions and rules, as appeals are allowed from justice of the peace courts and county courts respectively.

"Section 6. When any party to a civil action, or the defendant in a criminal case, tried in this court shall deem himself entitled to a new trial on account of any matters or things which are grounds for a new trial in the law courts of this state, such party or parties shall have the right, within five days after rendition of such judgment, to apply for a rehearing or new trial—whether or not an appeal has been taken from such judgment—notice of which motion shall be given the adverse party or parties according to rules obtaining in circuit courts, and said motion may be continued from time to time by the judge of said court. And an appeal will lie and may be taken within five days after any judgment or order overruling the motion for a new trial, or by the successful party or original trial within five days after any judgment in said cause has been rendered against him.

"Section 6. The judge of said court shall have the same power and authority as county courts now have to punish for contempt of court."

Premises considered, it is my opinion that the Municipal Court of Limestone County has concurrent jurisdiction of courts of justices of the peace and the county court.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 12, 1936.

Hon. Walter K. McAdory, Chief,
Alabama Highway Patrol,
Montgomery, Alabama.

Under facts set out party held not to be a contract carrier within the meaning of Act No. 159 (H. 113 approved Oct. 28, 1932, (Acts 1932, P. 178).

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of May 28, 1936, stating:

"I respectfully request your opinion as to whether or not an individual under the following circumstances comes within the provisions of the bill known as the Tidwell Bill, Acts of the Legislature 1932, page 179, re Contract Carriers:

"An individual's principal business is distributing daily newspapers, supervising the carriers of a daily paper in a given territory, collecting from the carriers in this territory, selling subscriptions to the paper and collecting from these subscribers, and in addition delivers two or three bundles of newspapers on route from the newspaper office to his territory for which he receives a small compensation of a few dollars a month in addition to his compensation for soliciting subscriptions, delivery of papers, supervision of carriers, collection from carriers, and collection from subscribers.

"These bundles are carried in his own private automobile along with the papers which he himself distributes.

"Is he a contract carrier within the meaning of the Tidwell Bill and subject to the provisions thereof?"

I am of the opinion that under the facts set out by you the party comes within the exception provided by Section 1-D-3 of Act No. 159 approved Oct. 28, 1932 (Acts 1932 P. 178) providing:

"Contract carrier shall not mean or include . . . 3. Any person, firm, association or corporation who does not regularly engage in the transportation business, but occasionally transports persons or property for hire."

It is clear that your party is not regularly engaged in the transportation business, and that which he does is merely incidental to his regular business.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 15, 1936.

Hon. Gordon Persons, Chairman,
Rural Electrification Authority,
First National Bank Bldg.,
Montgomery, Alabama.

Alabama Public Service Commission: Non-profit membership corporations formed under Act. No. 45, H. B. 133, approved February, 1935, (General Acts 1935, p. 100) as amended by Act No. 168, H. B. 469, approved July 8, 1935, (General Acts 1935, p. 229) are not subject to regulation and control by the Alabama Public Service Commission, but no bonds or obligations of said corporations shall be issued and/or sold until consent to the issuance and sale thereof shall have been given by the Alabama Public Service Commission, provided the Public Works Board of Alabama is not in existence at that time. The Clarke-Washington Electric Membership Corporation does not have to obtain a certificate of convenience and necessity from the Alabama Public Service Commission for the construction and operation of the proposed lines.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 6, 1936, in which you state:

"During the regular session of the 1933 Legislature there was passed, and later approved by the Governor on February 7th, an Act providing for the formation of non-profit membership corporations for the purpose of bringing the benefits of electricity to those rural residents not having this service available. The act in question is House Bill No. 133 by Reeder.

"Later on during the regular session there was an amendment to this act, approved July 8th, by Walker, in House Bill No. 469.

"A question has arisen whether an electric membership corporation, formed in accordance with the above mentioned act and amendment thereto, which plans to serve its members only, is subject to the jurisdiction of the Public Service Commission and if so, is required to then obtain from the Commission a certificate of convenience and necessity for the construction and operation of the proposed lines.

"It is requested that you deliver to us, at the earliest possible moment, an official opinion on this subject, particularly as applying to the Clarke-Washington Electric Membership Corporation, which was incorporated on March 2, 1936."

In my opinion, non-profit membership corporations formed under Act No. 45, H. B. 133, approved February 7, 1935, (General Acts 1935, p. 100) as amended by Act No. 168, H. B. 469, approved July 8, 1935, (General Acts 1935, p. 229) are not subject to regulation and control by the Alabama Public Service Commission, but no bonds or obligations of said corporations shall be issued and / or sold until consent to the issuance and sale thereof shall have been given by the Alabama Public Service Commission, provided the Public Works Board of Alabama is not in existence at that time. The Clarke-Washington Electric Membership Corporation does not have to obtain a certificate of convenience and necessity from the Alabama Public Service Commission for the construction and operation of the proposed lines.

Section 9741 of the 1923 Code of Alabama, provides in part as follows:

"9741. *** Nothing in this article, however, shall be deemed to confer upon the commission power and jurisdiction to regulate and supervise in respect of rates and service regulations any utility owned and operated by any municipal corporaton in the state. ***"

In the case of Carey v. City of Haleyville, 161 So. 496, the Supreme Court of Alabama said: A municipal corporation is an instrument of the state and possesses such power as the Legislature confers upon it.

In the case of Culpepper v. Phoenix City, 216 Ala. 318, 113 So. 56, the Supreme Court of Alabama, speaking through Mr. Justice Somerville said:

"It is inconceivable that the Legislature could have intended, in the face of these plain and positive provisions, to have included municipal corporatons among the utilities which are subjected in these respects to regulation and control by the Public Service Commission. Very clearly the utilities thus subject are those only which are privately owned and operated, and not those owned and operated, or to be owned and operated, by a branch of the government itself, and for the financing of which special provision has been otherwise made."

In the case of Alabama Great Southern R. Co. v. Alabama Public Service Commission, 210 Ala. 151, 97 So. 226, the Supreme Court of Alabama said: As the Public Service Commission is a statutory creation and is granted authority in derogation of commonlaw rights, it has only such authority as is clearly granted to it upon a strict construction of the statute.

In the case of In re Joe Brown & Sons, 263 North Western, 887, 273 Michigan, 652, the Supreme Court of Michigan said: The powers of the Public Utilities Commission are derived solely from statutes, and authority for its acts must be found therein.

Section 10 of Act. No. 45, H. B. 133, approved Feruary 7, 1935, (General Acts 1935, pp. 100) provides as follows:

"Section 10. Each corporation formed under this Act is hereby vested with all power necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the Legislature of Alabama; and no enumeration of particular powers hereby granted shall be construed to impair any general grant or power herein contained, nor to limit any such grant to a power or powers of the same class or classes as those so enumerated."

Section 2 of Act No. 168, H. B. 469, (General Acts 1935, p. 229) which amends the Act. supra, provides in part as follows:

"Section 2. Section 9 of the said Act be and the same is hereby amended so as to read as follows:

'Section 9. The corporate purpose of each corporation formed hereunder shall be to render service to its members only, and no person shall become or remain a member unless such a person shall use energy supplied by such corporation and shall have complied with the terms and conditions in respect to membership contained in the by-laws of such corporation. ***"

In my opinion, the Legislature of Alabama has placed the non-profit membership corporations in the same classification as utilities owned by mu-

nicipalities in regard to being regulated by the Alabama Public Service Commission. The powers given to said corporaton are not dependent on any subsequent approval of the Public Service Commission with the exception provided by Section 12½ of Act No. 45, supra, which is as follows:

"Section 12½. No bonds or obligations of any corporation formed under this Act shall be issued and / or sold until consent to the issuance and sale thereof shall have been given by the Public Works Board of Alabama or in the event no such body is in existence at the time, by the Alabama Public Service Commission, to be evidenced by resolution or order under seal of such body granting such consent. Such consent shall be granted only after a public hearing and after a petition requesting such consent has been duly filed by such corporation with the secretary of such Public Works Board more than five days before such public hearing. Such petition shall specify the plan or program of the corporation and the uses to which it is proposed to put the proceeds of such issue and such other matters as are necessary fully to advise such Public Works Board of the nature of the corporate purpose in furtherance of which such issue is proposed and said petition shall include such other information as may be required by the rules of such Public Works Board. Such Public Works Board shall grant such consent only after it finds that such issue and / or sale serves some public need, and is in the public interest. It shall be unlawful for the corporation to use the proceeds of any such issue and / or sale contrary to the plan and purposes presented to such Public Works Board in obtaining its consent thereto. The corporation applying for such consent is authorized to pay such fees as shall be lawfully assessed against it by the body to which it applies for such consent."

To require a membership corporation to secure a certificate of convenience and necessity from the Alabama Public Service Commission, might be to abrogate the statute in that the Commission would have the right to veto the statute by refusing to grant the certificate. In my opinion the Legislature by providing for the formation of the non-profit membership corporations has obviated the necessity of said corporations securing certificates of convenience and necessity from the Alabama Public Service Commission.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 15, 1936.

Hon. Watkins M. Vaughan,
Judge of Probate,
Dallas County,
Selma, Alabama.

Revenue Act of 1935—

1. Provisions of Section 239, fixing fees of probate judge and tax collector in certain cases at lesser amount than was fixed by previous revenue law, were "adopted" during the period of operation of the so-called Sparks Amendment to the Constitution and are, therefore, not subject to the inhibitions contained in Sections 68 and 281 of the Constitution against decreasing or diminishing the salary or compensation of an officer during the term of his election or appointment.

2. Provisions of Section 239 are effective as of July 10, 1935, the date the Revenue Act was approved or "adopted," since it comes within the proviso "except as herein otherwise provided" contained in Section 407 of the Revenue Act.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of May 7th, 1936, as follows:

"Please advise me at earliest moment on the following proposition:

"Section 68 of the Constitution provides among other things as follows:

"The Legislature shall have no power—

—to increase nor decrease the fees nor compensation of such officers during their terms of office; etc.

"The Sparks Amendment (Acts 1933, p. 47) suspends until **October 1, 1935** the above provision of the Constitution.

"The 1935 Revenue Code, by its provisions (Sec. 407, p. 318,) went into effect **on the 1st day of October, 1935.**

"By the terms of the said Revenue Code (Sec. 239 on page 104) it is provided as follows:

" 'Sec. 239. For each notice to a delinquent property owner etc. etc.— the Judge of Probate is entitled to a fee of twenty five cents, and for each decree of sale, twenty five cents. The Tax Collector shall have twenty five cents for serving each notice' etc. etc.

"The point on which I desire an opinion is whether this Section 239 violates Section 68 of the Constitution, which seems to control, inasmuch as the Sparks Amendment was not in force on October 1st, 1935, the day when the provision of the Revenue Code went into effect.

"This is of particular importance at this time as under the previous Revenue law, the above mentioned fees were greater, (Section 273, p. 166, Revenue Code 1929) and if not collected on that basis it is probable the Examiner will figure the amount of earnings of the Probate Judge on the basis of what he should have collected, as provided in the 1929 Revenue law. These fees are now being collected by the Tax Collector, which makes it important to have your opinion at earliest convenience."

To intelligently answer your inquiry, we must first determine the sense in which the words "adopt," "adopted" and "adoption" were used in the so-called Sparks Amendment to the Constitution. In strict legal terminology, there is a difference in meaning between "adopt" and "enact." On this difference, in 1 Corpus Juris 1965, the case of Williams v. Michigan Bank, 7 Wend. (N. Y.) 539, 557, is cited. In that case the Court said:

"Much was said in argument about the meaning of the terms 'adopt' and 'enact' and there is no doubt a difference. To enact implies the creating anew a law which did not exist before; but adopt no doubt implies the making their own that which was created by another." But an examinaton of the Sparks Amendment leads me to the conclusion that the terms "adopt,"

"adopted," and "adoption" were there used by the Legislature without this distinction in mind. The Legislature was evidently unaware of this distinction, and it is very clear to me that these terms were there used as synonymous with the terms "enact," "enacted," and "enactment." "A particular word in a statute must be construed with due regard for the connection in which it is used." Haisten v State, 5 Ala. App. 56, 59 So. 361. Therefore, we must deal with the terms "adopt," "adopted," and "adoption" as used in the Sparks Amendment as though they were "enact," "enacted," and "enactment."

If the provisions of the 1935 Revenue Act to which you refer were "adopted," or enacted prior to October 1, 1935, then they were "adopted" or enacted during the period of operation of the Sparks Amendment, and are therefore not subject to the inhibitions contained in Sections 68 and 281 of the Constitution. The 1935 Revenue Act was approved by the Governor on July 10, 1935; Section 407 of said Act provides that except as otherwise therein provided, the provisions of the Act shall go into effect on October 1, 1935. Thus the question presents itself as to when the Act was "adopted" or enacted. I am unable to find where our courts of last resort have passed directly on this question, but a search of the decisions of other jurisdictions reveals the following: "In ordinary usage, the passage of an Act is well understood as that time when it is stamped with the approval of the requisite vote of both houses in the constitutional manner, signed by the presiding officer of each house and approved by the Governor, or passed over his veto or when it becomes a law by lapse of time. But its going into effect is an entirely different thing as is well understood." Indiana v. Williams, 173 Ind. 414. Therefore, I am constrained to hold that the 1935 Revenue Act was "adopted" or enacted on July 10, 1935, the day it was approved by the Governor, and not on October 1, 1935, the effective date provided by Section 407 of the said Act. The Sparks Amendment did not cease to operate until midnight of September 30, 1935. Therefore, it is my opinion that the provisions of Section 239 of the 1935 Revenue Act fixing fees of the probate judge and tax collector in certain cases in lesser amounts than was fixed by previous revenue law, were "adopted" during the period of operation of the so-called Sparks Amendment to the Constitution and are, therefore, not subject to the inhibitions contained in Sections 68 and 281 of the Constitution against decreasing or diminishing the salary or compensation of an officer during the term of his election or appointment.

However, there is another reason for reaching this conclusion.

Section 1 of the Sparks Amendment provides among other things:

> "Any other Act of the Legislature adopted prior to October 1, 1935 decreasing or diminishing the salary, fees or compensation of any officer or officers, during the term for which such officer or officers may have been elected or appointed, shall be effective from and after the first day of the month next succeeding the date of the ratification and adoption of this amendment, or from and after the adoption by the Legislature of any such Act decreasing or diminishing the salary, fees or compensation of such officer or officers."

The 1935 Revenue Act was "adopted" or enacted on July 10, 1935, and under the terms of the above quoted provision of the Sparks Amendment, became effective on that date in so far as it relates to decreasing or diminishing the salary, fees or compensation of officers.—Houston County et al. v. Harry K. Martin, Supreme Court Manuscript, opinion rendered June 11, 1936. It is true that Section 407 of the 1935 Revenue Act provides that the Act shall

go into effect on October 1, 1935 except as therein otherwise provided. But, in my opinion, Section 239 comes within the exception contained in Section 407. It is very apparent that, should Section 407 attempt to postpone the effective date of Section 239, it would be unconstitutional, as in conflict with the above quoted provision of the Sparks Amendment.

> "Where a statute is capable of two constructions, one of which would render it invalid and the other valid, the construction which will uphold its validity must be adopted."
>
> Wilkinson v. Stiles, 200 Ala. 279, 76 So. 45.

Therefore, I am constrained to hold that Section 239 comes within the exception contained in Section 407 and that it goes into effect on the date it was "adopted" or enacted, in accordance with the provisions of the Sparks Amendment, supra. The Legislature, by exception or proviso, can provide that parts of an Act may take effect at different dates. State v. Black, 199 Ala. 321, 74 So. 387.

Recapitulating, it is my opinion that the provisions of Section 239 of the 1935 Revenue Act were validly and legally enacted during the period of operation of the Sparks Amendment and are effective from the date of their "adoption" or enactment, to wit July 10, 1935.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 16, 1936.

Hon. R. A. Leath,
Sheriff, Etowah County,
Gadsden, Alabama.

Under Senate Bill 64—Starnes, approved April 21, 1936, Judges of the Circuit Courts of Alabama are given the power to appoint court bailiffs, but such bailiffs are under the direction of the sheriff and must obey his orders.

It is the sheriff's business to see to the safe-keeping of all prisoners while being tried or in attendance on the Court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 26, 1936, in which you request my opinion as follows:

> "Who is responsible for the prisoners while they are being tried in Circuit Court, under the S-64-Starnes Bill giving the Circuit Judges the power and authority to appoint the Court Bailiffs the Sheriff or the Bailiffs?"

The appointment of court bailiffs does not in any way relieve the sheriff of the duty placed on him by law. I call your attention to Section 10189, Code of Alabama, 1923, where it says among other things:

> "To attend upon the circuit courts held in his county, when in session, and the courts of probate, and the county courts, and the court of

county commissioners, when required by the judge of probate, and to obey the lawful orders and directions of such courts."

It is true the Act you refer to gives the Judge the power to appoint court bailiffs, but when this is done, then they come under the direction of the sheriff and must obey his instructions, as he is in fact in charge of the Court so far as carrying out the orders of the Court are concerned.

All prisoners are in the charge and custody of the sheriff of the county and it is his duty to see that such prisoners do not escape when in court or out of court. I call your attention to Chapter 128, Sections 4004-4018 of the Code of Alabama, 1928.

See 5th Enc. Dig. 660, et seq.
Pentecost v. State, 107 Ala. 81, 18 So. 146.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 17, 1936.

Hon. T. D. Woodham,
Tax Assessor, Dale County,
Ozark, Alabama.

Taxation—Exemptions. Courts of County Commissioners, municipal authorities, and the State Tax Commission not authorized to make exemptions authorized under Section 3 of the Revenue Act of 1936 to any factory, mill or plant already erected at the time said Act became effective.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"The Cowikee Mills have purchased the plant and equipment formerly belonging to the Dale Cotton Mills of this city. The Cowikee Mills are now using the old buildings formerly used by the Dale Cotton Mills. As an inducement to the new company in operating the cotton mill in Ozark, the City of Ozark and Dale County, by joint resolution adopted May 10, 1935, have exempted the property of the Cowikee Mills from the payment of ad valorem taxes for a period of five years. I enclose a copy of the resolution for your information.

"Please advise me if the City of Ozark and Dale County have authority to exempt the Cowikee Mills from ad valorem taxes."

The facts stated in your letter are incomplete, but I infer that the Dale County Mills have heretofore been operating and subject to taxation and that the same property or assets were sold in the Cowikee Mills. You do not state whether the Cowikee Mills have made any additions to the property.

Section 3 of the 1935 Revenue Act authorizes the exemption of certain named factories or extensions thereto by the Court of County Commissioners, the municipal authorities and the State Tax Commission "for a period not exceeding ten years from the date of the incorporation or organization of such factories or plants, if incorporated and organized under the laws of the

State of Alabama, or for a period not exceeding ten years from the date of being granted permission to do business in the State of Alabama, if a foreign corporation or from the date of completion of such plant or factory, or from the date of the completion of such addition or extension thereof."

The Section however contains this further provision:

"Provided that the period of the foregoing exemptions shall not be extended, renewed or **in any way** added thereto, because of any reincorporation or reorganization of the original corporation, or the sale of the assets to a different person, firm or corporation."

And likewise this provision:

"Provided said exemption and remission shall not apply to property which at the time of the passage of this Act, constitutes any facory, mill or plant, already erected or constructed within the State at the time of the passage of this Act."

It therefore appears that the Court was without power to grant such exemption as to any buildings erected at the time of the effective date of the Act, to wit, Oct. 1, 1935.

If there has been an extension or improvement to the value of $50,000 or over during a twelve month period, since the Act became effective then, the above named authorities may grant such exemption.

As to that part of the resolution attempting to remit taxes already due, such action is violative of Section 100 of the Constitution.

Union Bank & Trust Co. v. Phelps, 228 Ala. 236, 153 So. 644.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 17, 1936.

Hon. J. A. Keller,
Superintendent of Education,
Montgomery, Alabama.

Schools—Funds encumbered for repairing rural school houses in Autauga County held subject to re-appropriation to be applied in repairing a second rural school building when the patrons of the first rural school were unable to meet the requirements of the law.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 21, 1936 requesting my opinion as follows and in which you request permission to withdraw your previous request for an opinion on the questions set out in this letter as follows:

"Referring to your opinion of April 2 in which you answer my inquiry as to whether or not I would be justified in approving a new application for state aid in the repair of a school building in Autauga County, permit me to say that this matter has been discussed with Mr. Small, who wrote the opinion. It is quite evident that my letter was not clear

in outlining the circumstances under which the opinion was requested. I am therefore kindly requesting that you withdraw it and allow me the privilege of re-stating the conditions, which are as follows:

"1. An application for state aid in the amount of $75, for the repair of Mt. Sinia school building in Autauga County was approved by me in the regular way on August 31, 1935, and the funds encumbered.

"2. The local citizens for some reason were unable to carry out the terms of the application, and were therefore not entitled to the state aid funds which had been encumbered. (See Section 385, Article 18 of the Alabama School Code of 1927).

"3. Let me state that in accordance with an opinion of the Attorney General dated May 11, 1933, and captioned as follows: "Issue of Warrants Under Section 382 School Code of 1927," state aid funds for the erection, repair and equipment of buildings are encumbered in lieu of issuing warrants as set out in Section 382 of the School Code of 1927.

"4. The county board of education is now requesting that the original application be cancelled, as shown by the enclosed resolution, and that a new application, in the same amount, be approved by me for equipping the Marbury School, located in the same county, taking up the encumbered amount called for in the original application.

"Please let me know if in the circumstances outlined above I would be justified in approving this new application."

In reply, I wish to advise that the previous opinion addressed to you under date of April 2nd is hereby withdrawn and the present opinion is substituted therefor.

Since your second letter contains material facts not so expressed in your original letter, in my judgment, the answer to your question should be in the affirmative.

I am informed by your office that both schools are located in Autauga County. The funds here encumbered were encumbered for use in this particular county. In my judgment, the fact that Mt. Sinia School is unable to meet the requirements for State Aid does not prevent the use of these funds on another school in the same county since the said funds have been encumbered for use in this county. The funds under these circumstances are available for use in repairing other school buildings in the county and an application approved in accordance with the law governing such application would in my judgment be valid and proper.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. J. Lee Smith,
Probate Judge,
Chilton County,
Clanton, Alabama.

Taxation—Board of Review—Members not entitled to mileage in attending the sessions of the Board.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Will you please advise me whether or not the Members of the Board of Review are entitled to mileage and I presume that if you so hold them they would be entitled to it at each of the adjourned sessions of the Board?"

In my opinion members of the Board of Review are not entitled to mileage in going to and returning from the sessions of the Board.

Section 70 of the Revenue Act of 1935 provides:

"The members of the courts of county commissioners or boards of revenue, or courts of like jurisdiction of the several counties of the State shall receive, as members of the Board of Review, the same per diem and be paid in the same manner as when sitting at a regular term of such court of county commissioners or board of revenue when such compensation is fixed on a per diem basis, which compensation shall be in addition to that as now fixed by law, except in counties where such officials are paid a salary."

Section 6771 of the Code of 1923, relating to the regular compensation of members of the Commissioners Court, while engaged as such, provides for both per diem and mileage. It is reasonable to assume that, had the Legislature intended by Section 70 of the Revenue Act to provide mileage for members of the Court while engaged as members of the Board of Review, it would have said so in so many words. Before a public officer is entitled to claim any allowance, compensation or fee, he must be able to point to a specific provision of law authorizing the same. Inasmuch as Section 70, supra, does not purport to authorize mileage for attendance upon meeting of the Board of Review, it is my opinion that none is allowable.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. J. Oppenheimer,
Member of Board of Revenue,
Barbour County,
Eufaula, Alabama.

Counties—Under facts set out, County Board of Revenue of Barbour County held authorized to make temporary loans from surplus funds collected to retire bonds described to meet necessary current governmental expenses.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 25, 1936, which is as follows:

"The depression prevailing for some seven years has been embarrassing to all states in this American Union, and likewise, to the several counties which compose these states. No section has escaped, and right now

in our own commonwealth of Alabama we seem to be financially 'up against it'. Just what the solution of the question will be remains to be seen. Our county of Barbour—like unto all other counties, has not escaped, and it has taken the best thought and management of our Board of Revenue, composed of competent citizens, to tide the county over the period just elapsed, and which condition still prevails.

"Barbour County is a large one, covering over some nine hundred square miles. We have over fourteen hundred miles of roads within its borders, and three hundred eighty-five bridges; and the branches and creeks that are scattered over the county, are no small streams. The bridges necessary to be built and kept up across these streams are many, and in a great many cases, **very expensive.** The Chewalla Creek and its branches; the Cowikee, and its several branches; the Choctohatchee and its numerous tributaries; the Barbour; the White Oak; the Chanahatchee, et al., too numerous to mention, and the Pea River on the Western boundary, furnish the county with probably some fifty **large—long—and heavy bridges** to be maintained. Our floods are annual, and last long, and are very destructive to the bridges—across practically every road, and are necessary to be maintained to enable our people to travel.

"The flood of 1933 cost the county practically $40,000.00 to repair and rebuild the bridges for that year. The floods of this year 1936, swept away a number, and seriously damaged a large number, to such an extent our people were unable to travel in the county for quite a while, and even now—since the floods have abated, it is necessary to detour in several cases, on account of the bridges washed away.

"Our county has two Court Houses, one at Clayton, and the other at Eufaula. The Eufaula Court House was condemned by the State Fire Marshall, and a new one was erected. The one at Clayton was in such bad repair that it was practically rebuilt. The two cost the county $85,000.00. The new Court Houses were absolutely necessary.

"The State Highway Commission were—and have been so busy **elsewhere,** that so far as roads are concerned, the county has had to keep up its own roads, at great expense. The road known as the highway toward Comer Station, cost the county practically $75,000.00.

"The terrible financial condition and the loss in value of real estate caused a decrease in the assessed tax valuations of Two and One-Half Millions of Dollars, decreasing the tax receipts from $75,000.00 to $100,000.00, for the past five years.

"It is easy to see that under existing conditions the Board of Revenue has a great financial task confronting them to carry on the necessary current governmental expenses in the County of Barbour.

"Prior to the 6th day of December, 1875, Barbour County contracted a debt in connection with the aiding in the building of a railroad from Clayton to Eufaula. This debt not having been paid, or the amount of $85,000.00 being still due on same, it was refunded by an issuance of bonds in 1899, to become due and payable in thirty years. A special tax was levied for years to take care of the interest on this indebtedness. After issuing the bonds in 1899, and after the adoption of the Constitution of 1901, and prior to the date of their maturity in 1929, the Board of Revenue of Barbour County, for the purpose of paying said bonds with interest thereon, levied **annually the tax on taxable property in Barbour County**

at the rate of one-fourth of one per centum, per annum, as provided by Section 215 of the Constitution of Alabama of 1901.

"In the year 1929, these 'railroad' bonds fell due, and by agreement with the bondholders the indebtedness was refunded by an issuance of new bonds, dated July 1st, in an amount of $85,000.00, payable at a future date in denominations set out as shown below, bearing interest at 6%, payable semi-annually on the first days of January and July of each. Eight of said bonds of $1,000.00 each issued in 1929, with interest thereon, and the interest on all of them up to date has been paid by the present Board of Revenue in full.

"There remains the following bonds, amounting to $77,000.00, and payable as hereby shown:

1 bond $2,000.00, due July 1st, 1936;
1 bond $2,000.00, due July 1st, 1937;
1 bond $2,000,00, due July 1st, 1938;

1 bond $3,000.00, due July 1st, 1939;
1 bond $3,000.00, due July 1st, 1940;
1 bond $3,000.00, due July 1st, 1941;
1 bond $3,000.00, due July 1st, 1942;
1 bond $3,000.00, due July 1st, 1943;
1 bond $3,000,00, due July 1st, 1944;
1 bond $3,000.00, due July 1st, 1945;
1 bond $3,000.00, due July 1st, 1946;
1 bond $3,000.00, due July 1st, 1947;
1 bond $3,000.00, due July 1st, 1948;
1 bond $3,000.00, due July 1st, 1949;
1 bond $3,000.00, due July 1st, 1950;
1 bond $3,000.00, due July 1st, 1951;

1 bond $4,000.00, due July 1st, 1952;
1 bond $4,000.00, due July 1st, 1953;
1 bond $4,000.00, due July 1st, 1954;
1 bond $4,000.00, due July 1st, 1955;
1 bond $4,000.00, due July 1st, 1956;
1 bond $4,000.00, due July 1st, 1957;
1 bond $4,000.00, due July 1st, 1958;
1 bond $4,000.00, due July 1st, 1959.

"A copy of said bonds is hereto attached and marked Exhibit 'A'. It will be noted that the bond has no clause therein that **gives the county the right to call the bonds in for payment before the due date thereon.** Neither does the bond provide that it is to be paid out of any special fund. It is a general county bond for which the **faith and credit of the county is pledged to the punctual payment of the principal and interest.**

"Since the issuance of the new bonds in 1929, the present Board of Revenue has duly and consistently as required by law set up the 'Sinking Fund' as provided by law for the payment of the so-called railroad bonds, and has at all times had on hand and kept on hand in the 'Sinking Fund,' maintained by the assessment of taxes for the extinguishment and cancellation of the said 'railroad' bonds.

"There has accumulated from time to time, and will accumulate a large sum of money in this 'Sinking Fund,' Section 6755 of the Code of

1923, Paragraph 22, and the Board of Revenue has not deemed it wise to invest that Sinking Fund into securities, or enabled to obtain interest thereon, for deposit.

"It is the desire of the Board of Revenue to borrow from the 'Sinking Fund,' from time to time such sum or sums of money as **may be necessary for the payment of actual and necessary governmental expenses of the county**. The said borrowing from the said 'Sinking Fund' to be in good faith, and to be repaid when funds from the collection of taxes are paid into the County Treasury to enable a refund of the loan. There are frequent times when unusual conditions occur, as are stated in the first several paragraphs of this request, where actual cash money is absolutely necessary, and can not be obtained to carry on the current governmental expenses, whereby the necessary government functions of the county can not be performed. There—in the bank—drawing no interest (because the banks pay no interest), and governmental functions stopped for lack of cash.

"Please advise our Board of Revenue if it is possible to use any of the said monies in said 'Sinking Fund' to carry on the necessary functions of government, when absolutely necessary. We beg to call your attention to an opinion of a former Attorney General rendered Probate Judge of DeKalb County, August 16th, 1934, in which he holds that when it is absolutely necessary to use part of the sinking fund for the necessary operating expenses of the county, the same may be done. Citing Rhodes v. Marengo County Bank, 205 Ala. 667; Ramage Parks & Co. vs. Folmar, 214 Ala. 661."

You attach copy of one of said bonds and call especial attention to the fact that no right to call the said bonds before the due date is contained therein and that further the bonds are general "county bonds for which the **faith and credit of the County is pledged to the punctual payment of the principal and interest.**"

The form of the bond submitted states "that the indebtedness of said bond, together with all other indebtedness of said County of Barbour is within every debt or other limit prescribed by the Constitution or Statutes of said States." You state that funds in excess of the sum necessary to provide for the payment of the annual interest due and the annual principal payments necessary to retire said bonds have been and are being collected and which is on deposit in a bank but is not on interest as the banks have refused to pay interest.

You specifically request:

"It is the desire of the Board of Revenue to borrow from the 'Sinking Fund', from time to time such sum or sums of money as **may be necessary for the payment of actual and necessary governmental expenses of the county.** The said borrowing from the said 'Sinking Fund' to be in good faith, and to be repaid when funds from the collection of taxes are paid into the County Treasury to enable a refund of the loan. There are frequent times when unusual conditions occur, as are stated in the first several paragraphs of this request, where actual cash money is absolutely necessary, and can not be obtained to carry on the current governmental expenses, whereby the necessary government functions of the county can not be performed. There—in the bank—drawing no interest (because the banks pay no interest), and governmental functions stopped for lack of cash.

"Please advise our Board of Revenue if it is possible to use any of the said monies in said 'Sinking Fund' to carry on the necessary functions of government, when absolutely necessary. We beg to call your attention to an opinion of a former Attorney General rendered Probate Judge of DeKalb County, August 16th, 1934, in which he holds that when it is absolutely necessary to use part of the sinking fund for the necessary operating expenses of the county, the same may be done. Citing Rhodes v. Marengo County Bank, 205 Ala. 667; Ramage Parks & Co. vs. Folmar, 214 Ala. 661."

I have reviewed the cases cited by you, to wit, Rhodes v. Marengo County Bank, 205 Ala. 667, and Ramage Parks & Co. vs. Folmar, 214 Ala. 661. I have also read White v. Mayor and Council of Decatur, 119 Ala, 476 decided three years before the Constitution of 1901; Mayor and City Council of Anniston v. Hurt, Admr., 140 Ala. 394, decided two years after the Constitution of 1901, and J. B. McCrary Co. v. Brunson, Mayor, 204 Ala. 85, 85 So. 396. All of these cases are to the effect that necessary current governmental expenses are to be paid in preference even to interest payments or bonded debts or other claims not a part of the current necessary governmental expenses. However, it is pointed out in the Ramage case that subdivision 6 of Section 231 of the Code makes interest payments a preferred claim. And this provision is retained in the amended section appearing in the Acts of 1935 at page 162.

To summarize, your letter and accompanying data show the following: that the bonds by their terms are to be retired annually and that this is being done. That they are not callable before maturity; that the taxes annually levied exceed the amount necessary for the annual principal and interest payments; that from the excess over and above the amount necessary to meet such annual interest and principal payments, which is in the bank, bearing no interest you propose to make temporary loans to meet necessary governmental expenses, which loans are to be repaid.

With all of these facts appearing, I find no specific prohibition from so using such surplus. Biennial Report of Attorney General 1932-34, page 621.

As these funds are not bringing in any interest, it would appear to be sound business policy to make temporary loans therefrom rather than to borrow otherwise and to pay interest.

Your case is different from that where all of the bonds or a major portion of them are to be retired at a single date. In that case, the sinking fund is accumulated against such maturity date, whereas, in your case, the annual revenues received exceed the annual retirements.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Capitol.

When a convict is paroled by the Board of Pardons on account of his having served his minimum sentence, he is paroled on good behavior and may be returned to the penitentiary by revocation of his parole to serve out the full term.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 9, 1936, in which you request my opinion as follows:

"Will you please give me an opinion on the following question:

"When a man has been discharged on his short time and violates the law before his long time has expired, can the Governor and Associate Members of the Board bring him back and make him serve his long time on the case he was discharged from."

In answering your request, I call your attention to Article 2, Indeterminate Sentence Law, Sections 5267-5276, Code of Alabama, 1923, both inclusive and especially do I call your attention to Sections 5270 and 5271 which are as follows:

"5270. Parole of prisoner after minimum sentence served.—Whenever the minimum term of sentence of any person imprisoned in the state penitentiary shall have expired, the warden of such prison where such person is imprisoned shall send the record of such prisoner to the board of pardons, and if, from such record, the board of pardons is reasonably satisfied that such person will remain at liberty without violating the law, then said board of pardons shall authorize the release of such person upon parole, and such person shall thereupon be allowed to go upon parole outside of the prison walls upon such terms and conditions as the board may prescribe but while on parole, such person shall be in the legal custody and under the control of the warden of the penitentiary until the expiration of the maximum time specified in his sentence, as hereinbefore provided, or until his pardon by the governor."

"5271. Arrest of prisoner on parole; when made—If the wardens of the prison from which such prisoner was paroled or the board of pardons, or any member thereof shall have cause to believe that the person so on parole has violated his parole or has lapsed into criminal ways, then such warden or any member of the board of pardons may issue a warrant for the arrest of such prisoner at any time prior to the expiration of the maximum period for which such person may have been confined in the penitentiary, which time shall be specified in the warrant."

Section 5270, supra, provides that when a convict is sent to the penitentiary on an Indeterminate sentence if his record while in the penitentiary warrants it, he may be PAROLED by the Board of Pardons at the expiration of his minimum sentence. I do not take this to mean that he must be paroled but after due consideraton may be paroled. Webster defines parole as pertaining to convicts to mean: "to release a convict on good behavior," the paroling of a convict at the end of his minimum sentence simply a parole during good behavior just as much so as if he had been paroled before the expiration of his minimum term. Under Section 5271, supra, if the convict fails to obey the laws of the State, such parole may be revoked and his rearrest ordered and the convict returned to the penitentiary to serve the balance of his term.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. Howell Turner,
Secretary of State,
Capitol.

Elections—Acts 1935, page 894 (which amends Code of 1923, Section 462, as amended by Acts of 1935, page 237) requires that candidates for county and municipal offices nominated by party machinery shall file or cause to be filed certificates of nomination not more than sixty days nor less than twenty days prior to the general election; and that all candidates nominated by petition of electors shall file declaration of candidacy, and that the nominating petition of electors shall be filed, prior to the date of the primary election.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your letter of May 20, 1936, requesting my opinion as follows:

"You will find herewith enclosed copy of Act No. 424, H. 905, passed at the 1935 regular session of the Legislature. I call your attention to Section 462 of the Code of 1923 in force prior to the passage of this amendment.

"The amendments to Section 462 are the following:

"The judge of probate shall also cause to be printed upon the ballots the name of any qualified elector who has been requested to be a candidate for any state, county, municipal or federal office by written petition signed, in case of a candidate for a state or federal office, by at least three hundred electors, and in case of a county or municipal office, by at least twenty-five electors qualified to vote in election, to fill said office; when such petition has been filed with him **before the first Tuesday in May in the year in which a state wide primary election is held.** Section 462 provided that such petition be filed 'not more than sixty days nor less than twenty days previous to the election.'

"In the next sentence the amendment provides the certificate of nomination or petition shall be filed with the Secretary of State 'before the first Tuesday in May in the year in which a state-wide primary election is held' instead of 'not less than thirty days before the day of election' as per the Code of 1923, Section 462.

"You will also note in the General Acts of 1935, on page 238, Section 462 was amended. This Act is identical to Section 462 of the Code with the exception of the last sentence which reads, and which is an addition: 'Provided, however, that the judges of probate of the several counties in this State are hereby prohibited from causing to be printed upon the ballots to be used in their respective counties the name of any candidate for any state, county or federal office who had not filed his or her declaration to become such a candidate before the first Tuesday in May in the year in which a state-wide primary election is held.'

"We called the attention of the author of this bill to the fact that this provision would necessitate every candidate for every party filing his declaration before the primary, whereas the author of the bill had advised it was his intention for his amendment to Section 462 to provide for **independent** candidates in the general election filing their intention

to become such candidates before the May primary. The bill was rewritten and introduced with our suggestion that instead of the judge of probate being prohibited from causing to be printed upon the ballots the name of **any candidate,** it read 'any independent candidate.' However, when the bill was finally passed the second time we found the above additions embodied therein relating to the petition and certificate of nomination, as the case may be, being filed before the first Tuesday in May.

"As the act provides now it appears the certificate of nomination of every candidate of every party shall be filed with the Secretary of State before the first Tuesday in May.

"Please advise whether or not the amendment to this act applies to candidates of all parties or only to independent candidates. I would further call your attention to the fact that it is impossible for a certificate of nomination of candidates to be filed before the date of the primary, convention or caucus, unless held before the first Tuesday in May, and the certificate of nomination of the Democratic party, of course, cannot be filed before the Democratic primary. Thus it seems to us that this act could not apply to party nominations, as amended. It further seems to us it was the sole intention of the Legislature that the provisions of this act only apply to independent candidates, in relation to the amendment. In the past we have received within the time prescribed by Section 462 certificates of nomination of other political parties. Since only independent candidates have complied with this act by filing prior to the first Tuesday in May, it seems such other political parties have not so construed this section to mean the certificate of nomination should be filed before the first Tuesday in May.

"Inasmuch as our action in accepting certificates of nomination will be based upon your opinion, I will appreciate an early reply."

In my opinion, Acts 1935, page 894 (which is a substitute for Code of 1923, Section 462, as amended by Acts 1935, page 237) is reasonably clear and workable. By the last enactment, the Legislature evidently intended to lay down a different rule to govern each of the two classes of nominees dealt with, namely, (1) those nominated as candidates for county or municipal offices by the caucus, convention, primary election, etc. of a political party; and (2) those nominated as candidates for any office, Federal, State, District, County or Municipal by a petition of electors. This latter class is commonly understood in Alabama to mean "independent candidates." Of course, as to candidates for Federal, State or District offices nominated by party machinery, certification to the Secretary of State is governed by Section 647 and certification by that official to the several Probate Judges is governed by Section 648 of the Code of 1923.

The last Act simply provides that, as to those nominated for county or municipal offices, by party machinery, certificate of nomination shall be filed not more than sixty days nor less than twenty days prior to the **general** election; whereas, as to those nominated for any offices, whether Federal, State, County, etc. by petition of electors (so-called "independents") the petition shall be filed and the candidate shall file his declaration of candidacy prior to the date of the primary election.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 18, 1936.

Hon. R. H. McAnelly,
Judge of Probate,
Jackson County,
Scottsboro, Alabama.

Elections—Registration.

Boards of Registrars required to meet and remain in session five days for registering voters, in all counties of State except Jefferson, Mobile and Montgomery, on first Monday in July of each year.

1. Meetings of Board of Registrars for registering voters, controlled by terms of House Bill 171-Waldrep, approved April 21, 1936.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"I would like for you to examine an Act of the Special Session of the Legislature, approved April 21, 1936, which act amended an Act of the Regular 1935 Session which was approved Sept. 14, 1935, and found on page 1120 of the Acts of 1935.

"I want to know if the Acts above referred to, and as amended, authorize the Board of Registrars of all counties in the state, except Jefferson, Montgomery and Mobile to hold a five day session, beginning on the 1st Monday in July.

"Please give me an advisory opinion at once in order that tne Board may give notice of the meeting, if same is authorized and legal."

In reply, I wish to advise that in my opinion, House Bill 171-Waldrep, approved April 21, 1936, controls the answer to your inquiry. This act provides in part as follows:

"In addition to the regular registration provided in this article, the courts of county commissioners, boards of revenue, county commissioners, or other courts of like jurisdiction of the several counties may make an order requiring the books of registration to be opened for ten working days during the month of January, 1921, and each two years thereafter, **and it shall be mandatory for the board of registrars to meet on the first Monday in July, 1936, and each two years thereafter and remain in session at each of said meetings five days for the purpose of registering voters, and the board shall meet on the first Monday in July, 1937, and each two years thereafter and shall remain in session at each of said meetings for five days for the purpose of registering persons entitled to register.*****"

This provision of this Act, in my judgment, applies to every county in the State of Alabama, except Jefferson, Mobile and Montgomery, which are governed by special provisions of the above named Act.

No August registration in all counties of the State is provided for in this Act, and therefore none may legally be held at this time.

Section 3 of the above named Act provides as follows:

"That all laws and parts of laws, except as otherwise provided herein, in conflict with the provisions of this Act, are hereby expressly repealed."

It will be seen therefore, that the provisions of this Act must control.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 22, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

1. Where an item of costs in a case where the defendant is sentenced to the penitentiary, has been omitted, either through error or inadvertently, it may later on be paid by the State, provided the amount of the costs omitted and the amount originally paid, does not exceed $250.00, as $250.00 is all the costs the State will pay in a penitentiary case under Section 3668, Code of Alabama, 1923.

2. However, the rule would be different where a defendant was convicted and sentenced to hard labor for the County. The State will only pay just such costs as the defendant is sentenced for and no more. Misdemeanor cases differ from felony cases as to costs, for the reason that in felony cases the defendant is not sentenced for costs.

3. The Clerk may issue execution in penitentiary cases for costs, provided at the time the defendant was sentenced there was a valid judgment entered up against the defendant for costs, otherwise, there would be no basis for execution.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 22, 1936, in which you request my opinion as follows:

"Under date of July 1, 1930, County Court Case No. 7533 was filed. The defendant in said case was charged with a felony and the Judge of Probate acting as exofficio Judge of the County Court and sitting as a magistrate waived to the action of the Grand Jury. The Grand Jury returned a true bill and said defendant was convicted and sent to the penitentiary. In making our cost bill covering the Clerk did not include the preliminary costs as follows:

"Justice of the Peace		
Complaints	.25	
Warrant	.50	
		.75
"Sheriff		
Arrest in felony case	4.00	
Approving bond	1.00	5.00
		5.75
"Amount allowed by Convict Dept. for preliminary		5.00

"An examination of records of Clerk is now being made and opinion is requested if this preliminary charge of $5.00 should be paid by Convict Department at this late date.

"Under date of July 1, 1930 Circuit Court Case No. 7605 was filed. The defendant in said case was charged with a felony and the Judge of Probate waived to the action of the Grand Jury and that body returned true bill. Indictment was amended in Circuit Court and defendant was convicted and sent to Hard Labor. Clerk failed to include the same preliminary costs as shown above and we desire opinion as to whether the Convict Department is liable for payment at this late date or not.

"Under date of October 1, 1930 a defendant is convicted and sent to penitentiary. The Clerk of Circuit Court neglected to issue execution for costs in said case. May Clerk, at this late date, issue said execution and then file claim for the costs not paid by Convict Department in said case from Fine and Forfeiture Fund?"

I note in your request you say "the judge of the County Court waived action to the grand jury." I am sure what you are attempting to say is that the defendant waived action to the grand jury, as the Judge has no such right or power—only the defendant can do this.

It is my opinion the State in penitentiary cases may even yet pay this preliminary costs provided the costs as originally collected from the State, together with the costs which you now seek to collect, do not go beyond $250.00, as $250.00 is all the costs the State will pay in any felony or penitentiary case. See Section 3668, Code of Alabama, 1923, which is as follows:

"Costs shall not exceed two hundred and fifty dollars.—The whole costs paid in any one case shall not exceed two hundred and fifty dollars."

I think this course is but fair and right, where there has been an honest mistake by the Clerk and an item of costs was inadvertently or through error omitted from the bill originally submitted to the State, which at the time was a proper item to be paid by the State. The State should pay the same provided it it not barred by the statute.

In answering your second request, the rule here is different; in hard labor cases, defendant is sentenced to a certain number of days to work out the costs, and if he works out the costs he is sentenced for, and works out the fine at so much per day, he goes free, and should the Clerk fail to enter any item of costs in calculating the time that would have been required to work it out, and the defendant was sentenced to hard labor and this item the Clerk omitted was not taken into account in figuring the costs, the State pays only such costs as it has had an opportunity to have worked out by the convict, and if it was not included in the sentence, then, of course, the State would not get the benefit of defendant's labor for this item and would not, after sentence, be under obligations to pay the same, even though it was a proper item to be included at the time the defendant was sentenced.

My answer to your third inquiry is in the affirmative, provided at the time the defendant was convicted, there was entered up against him, a valid judgment for costs and the same has been kept alive by issuing executions on same as required by law. What I mean by "valid judgment" is that the Judge entered upon his bench notes a requirement for judgment for costs, and the

Clerk, in obedience to these bench notes, followed the same up by writing a civil judgment for the costs incident to the prosecution.

Of course, the judgments for costs in criminal cases become a civil procedure as to issuing executions and the mode of collection.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 23, 1936.

Hon. Henry S. Long, Chairman,
State Tax Commission,
Capitol.

Attention: Hon. Harry Simon, Chief Clerk.

Licenses—Stores—

1. Persons storing their merchandise in public warehouses in this State and delivering from such warehouses by order signed by salesman or other representatives are liable for store license.

2. Persons who consign merchandise to merchants who sell the same as a part of their general stock, merely accounting to the consignor, are not liable for store license.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of March 23rd, in which you state:

"Your opinion is requested as to whether or not a person operating in this State in the manner as herein outlined, is subject to the payment of the chain store tax—Schedule 155, Article 13, Chapter 3, Acts of 1935.

"1. Persons who do not own nor maintain a store or establishment of any kind in Alabama, but merely store their merchandise in public warehouses in this State and from such stock of merchandise deliveries are made upon an order signed by a salesman or representative of such person or by an order from their office.

"2. Would persons who consigned merchandise to merchants in Alabama be subject to the chain store license?"

In reply to question 1, I advise that Schedule 155.7 defines a store as follows: "The term 'store' as used in this Schedule shall be considered to mean and include any store or stores or any mercantile establishment or establishments *** in which goods, wares and merchandise of any kind are sold either at wholesale or retail."

From the facts stated in your first question, it would appear that sales are made from such warehouses and, in my judgment, the persons who deposit their goods in such warehouses and make sales therefrom are liable for store license.

In answer to question 2, I assume that when you refer to consigned merchandise, you mean that such goods are handled in the manner usually customary, namely, that Manufacturer A consigns to Retailer B certain goods

but Retailer B places them in his stock and so far as the public is concerned, sells them as a part of his stock of goods and A has nothing to do with the sale and disposition or control of them other than retention of title and to require an accounting from Retailer B.

If I am correct in these assumptions, B is not conducting the store and is not liable for store license in my judgment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 23, 1936.

Hon. W. W. Hill,
Judge of Probate,
Montgomery County,
Montgomery, Alabama.

Taxation. Licenses. Automobile dealers—Batteries.

Person taking out license under Schedule 12 of the 1935 Revenue Act not required to take out license levied by Schedule 20 before repairing, recharging or selling batteries.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter of recent date, stating:

"Should an automobile dealer, who purchases a license to do business under Schedule 12 of Chapter 13 of the 1935 Revenue Bill be required to purchase also under Schedule 20 a license for a battery shop for the sale and repair of automobile batteries, when Schedule 12 specifically says:

" 'Provided that upon payment of the license according to the foregoing schedule, a dealer in automobiles may do a general automobile and automotive business and not be required to pay any further or additional State and County licenses to handle or sell automobile accessories and parts, radios, tires and **batteries**, or for the operation of a garage for storage where a charge is made, or for the repair or painting of motor vehicles or trucks.' ?"

In reply, I advise that in my opinion the provision of Schedule 12 quoted by you relieves a person paying the license levied by Schedule 12 from payment of the license levied by Schedule 20.

The quoted proviso of Schedule 12 relieves such person of additional licenses "to handle or sell . . . batteries or for the operation of a garage . . . for the repair or painting of motor vehicles or trucks."

Schedule 20 levies a license on "each battery shop for the repairing, recharging or selling batteries."

Manifestly persons licensed under Schedule 12 may **sell** batteries, one of the privileges included in Schedule 20. Moreover the repair of motor vehicles or trucks can well be extended to the repair of batteries, a battery being a part of the standard equipment of a motor vehicle.

I do not believe it was the intent of the legislature to separate taxable privileges under Schedule 20, but they are all to be considered together. That is a party taking out a license to sell batteries may repair and recharge them without further license.

The licensed automobile dealer being authorized to sell and repair batteries, may also recharge them without the payment of the license levied by Schedule 20.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 23, 1936.

Hon. J. C. Kellett,
Probate Judge of DeKalb County,
Fort Payne, Alabama.

County Financial Control Act—

Acts of 1935, page 803 held to be amended by local act H. B. 151—Tolbert, approved March 24, 1936 insofar as is necessary for the inclusion in the DeKalb County Budget of salaries of deputy sheriffs provided by said H. B. 151—Tolbert.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of May 15th, 1936, in which you request my opinion as follows:

"On March 24, 1936, H. Bill 151—Tolbert—which is a local bill affecting DeKalb County, was approved. A copy of this bill is enclosed herewith.

"Section two of this bill states that on the first day of each month the sheriff shall furnish the Board of Revenue with a statement of the service of said deputy and it shall be the duty of the County to order a warrant drawn upon the General Fund of the County payable to said deputy sheriff.

"DeKalb County has no board of revenue but its financial affairs are directed by a Board or Court of County Commissioners, composed of Judge of Probate and four County Commisisoners.

"At the regular Session of the 1935 Legislature of Alabama Act 379—known as or Captioned 'County Financial Control Act' was passed requiring the various counties of the State to establish and operate on a budget. Can the Court of County Commissioners at this time pay from the General Fund of the County the salary of the Deputy sheriff when no provision was made for it at the time of the establishment of or setting up of the regular annual budget for the County?"

In reply, I wish to advise that in my opinion, the Act of the Legislature of 1936, H. B. 151 Tolbert, approved March 24, 1936 and referred to by you in your request, controls the answer to your question. In my judgment, the County Financial Control Act (General Acts of 1935, page 803) commands that an estimate of the income and expenditure of the county be made at

the beginning of the fiscal year by the county governing body, but the same is subject to change when conditions over which the governing body of the county have no control arise. Such a situation, in my judgment, arises here, and the County Budget Act should be amended to meet the situation thus arising.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 23, 1936.

Hon. E. W. Patton, Secy-Treas.,
Board of Dental Examiners,
Birmingham, Alabama.

Members of Board of Dental Examiners are state officers, as relates to suits, but are liable for torts.

Revoked licenses may be restored upon payment of former penalty.

Board members take office immediately upon election. Non-succession applicable to members now in office.

Using X-ray for certain purposes, constitutes practice of dentistry under new act.

What constitutes "confines" is question of fact.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I am in receipt of your letter of February 4, 1936, which is as follows:

"Will you kindly advise the Board of Dental Examiners of Alabama on the following:

"1. Are the members of the Board of Dental Examiners of Alabama state officers; and therefore, as such and in the discharge of their official duties, not liable to suits in the courts? If they are liable, can the Board be incorporated under the laws of the state?

"2. Secs. 348 and 349, Code of 1923 amended 1927 provided for the annual registration, revocation and restoration of a dentist's license. The Legislature of 1935 repealed these two sections. The records of my office show that the license of a number of dentists are in default for non payment of the annual registration fee, and there is now no provision for restoring the same. Under the law what attitude should the Board of Examiners take toward the men whose licenses are in default and revoked?

"3. Sec. 337, Code 1923, amended 1927, provided that a member of the Board of Examiners should be elected for a period of five years, and Sec. 338 provided that—'the term of office of a member elected to said board shall begin on the first day of August in the year in which he was elected'. The 1935 Legislature amended Sec. 337 making term of membership on the Board 'to begin immediately.' Does Sec. 337 as amended 1935 apply to those Board members now in office, and who were elected for a term of five years which said term expires in August; whereas the successor will be elected in April preceding, and, if he takes office immediately

his predecessor will not have served his term out? Does the non-succession provision of the same section apply to those members now in office? Is it not true that they were 'so elected' for a 'term of five years,' and 'eligible for re-election' and that the provision cannot be made retroactive?"

I also have your letter of February 13, 1936, as follows:

"Under dates of the 4th inst. I requested opinions on certain sections of the amended dental law. When you render opinion on same, will you kindly also advise on the following:

"Some months ago you rendered an opinion on Sec. 325 as to the legality of a person, not holding a dental license, using an X-ray machine in making dental pictures. The 1935 session of the Legislature amended that section. To the Board of Examiners it is perfectly plain that, under the law as now is, to use the X-ray in administering treatment of a dental lesion, or in making dental radiograms (pictures) constitutes the practice of dentistry, and is therefore unlawful except as provided for in exemptions. Is our interpretation correct?

"It is not unlawful to make X-ray pictures of patients by a dental assistant in a room separate and apart from the 'confines' of her employer's regular office, and which said room is accessible from her employer's office only **through a public corridor?"**

Answering your questions in the order in which they are asked, I advise as follows:

1. I am of the opinion that members of the Board of Dental Examiners are state officers (**State v. Clausen,** 146 Pac. 630, 632, 84 Wash. 279), and are not liable when in the discharge of their official duties. However, even state officers are liable for their torts, **Finnell v. Pitts,** 222 Ala. 290, 132 So. 2, and this is true also of the officers of a corporation.

2. The act which you mention repealed only Sec. 349, and amended Sec. 348. The repeal of Sec. 349 did not operate "to revive rights lost or taken away" (59 C. J. 1186) and I am therefore of the opinion that all revocations and suspensions are still in effect. I am of the further opinion, however, that revocation of license under Sec. 349 as it formerly existed, was not a permanent revocation, but was to last only until the payment of certain fees and penalties prescribed, and that therefore, though Sec. 349 is now repealed, the revoked license may be reinstated upon the payment of the fees and penalties set, and due at the time of the passage of new act. I do not think it was the intention of the Legislature to deprive persons formerly suspended from re-entering the practice of dentistry.

3. The new act states specifically that the term of membership on the Board shall "begin immediately", and I am therefore of the opinion that the term of each officer begins as soon as he is elected by the Alabama Dental Association. This section (337 amended) applies to Board members now in office, and has the effect of reducing their terms. Further the non-succession provision would apply to members now in office. The right to be re-elected is not a vested right, and may be taken away.

4. Section 325 as now amended, in defining dentistry, provides in part:

"Any person shall be said to be practicing dentistry . . . . who uses or advertises to use an X-ray machine of any type in administering thera-

peutic treatment of any dental lesion, or in making radiograms, shadows, negatives or X-ray exposures of human teeth and jaws to be used by himself, herself, or any other person for the purpose of making a diagnosis of any disease, lesion or abnormality of the human oral cavity: . . . . . "

I am of the opinion that anyone not qualified or examined, who uses an X-ray as specified, is, under this provision, practicing dentistry, and is subject to the penalty provided in Section 3875 of the Code of 1923.

5. Whether the room which you mention is within the "confines" of the office of a licensed dentist, and whether the assistant is working under the "direct immediate supervision" of a licensed dentist, are questions of fact, on which this department could not, of course, make a ruling. I can only state that if the office or room is within the confines of the licensed dentist and the assistant is working under his direct immediate supervision, she is in the exempted class; otherwise not.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 23, 1936.

Hon. Hamp Draper,
Associate Member,
Board of Administration,
Montgomery, Alabama.

Where the defendant is sentenced to hard labor for the county in a criminal case and is received by the State, and while so working discharges himself by paying the balance of costs and the fine to the Convict Department the fine does not go to the Fine and Forfeiture Fund of the County from which he was sentenced but remains in the Convict Fund and to its credit.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 1, 1936, in which you request my opinion as follows:

"Will you please advise this office if we are not within our rights by accepting the payment of a fine for the use and benefit of the State Board of Administration after the defendant has been officially identified as a prisoner in the same manner as costs are collected and accepted as belonging to the State in toto, under an opinion to the Clerk of Circuit Court of Monroe County, dated July 9, 1929 (Biennial Report of Attorney General of Alabama, Oct. 1, 1928 to September 30, 1930.)"

Where the defendant is sentenced to hard labor he is sentenced to work out the costs and also sentenced to do so much time under Section 5290 Code of Alabama 1923 to work out the fine. Of course, I recognize the fact that the defendant may pay the fine and the costs at any time he may choose after he has begun his sentence, and in case he does so pay he is entitled to credit on the costs for the amount he has worked out, but not so with the fine for the reason the law makes no provision for this - - **Biennial Report of Attorney General, 1930-1932, p. 60; Biennial Report of Attorney General 1918-**

1920, p. 391; Biennial Report of Attorney General 1926-1928, p. 227; State v. Jordan, 23 Ala. App. 129. See also Section 5291, Code of Alabama, 1923.

The State, where it receives a convict, that is one sentenced to hard labor, and the convict works out the costs and fine the State is not required to pay the fine to the Fine and Forfeiture Fund of the County from which he is sentenced. The fine in this event he has paid just as assuredly as it would have had he paid it in cash. Therefore, it is my opinion that if the defendant pays the fine to the Convict Department, after he has been received by the State, in this event the fine does not go to the Fine and Forfeiture Fund of the County from which he was sentenced but remains in the Convict Fund and to its credit. The reason the State pays the costs is this: it is so provided by the statute under Section 3667, Code of Alabama, 1923, and we are unable to find any provision of law requiring the State to pay the fine to the county where the defendant is sentenced to hard labor and works out such fine at so much per day, or pays the same in cash after sentence begins.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. T. W. Shields, Sheriff,
Marengo County,
Linden, Alabama.

Where a defendant is being arrested in one County of the State charged with an offense committed in a different county, and in making the arrest, the defendant is wounded and carried to the hospital for treatment, the county from which the warrant of arrest emanated would be responsible for the hospital bill.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 4, 1936, in which you request my opinion as follows:

"I am writing for an opinion on the following statement of facts:

"An indictment charging the offense of Grand Larceny was found by the Grand Jury of Washington County at its Spring Term of Court 1930 against A. L. Stokes. Capias under this indictment was sent to me by the Sheriff of Washington County for execution.

"When my Deputy and I found Mr. Stokes, he resisted arrest and it became necessary to shoot him. He ran toward the house after we had ordered him to surrender, saying: 'Wait till I get my gun and I will fix you.' Fearing that he had a rifle at the house, I ordered my Deputy to shoot. After firing three shots, the fourth shot him in the leg.

"As a result of the shot, it was necessary to take Mr. Stokes to our County Jail Physician, who advised us that it would be necessary to take him to Selma to the hospital immediately. We took Mr. Stokes to the hospital, and the next day the Probate Judge gave us an order to keep him in the hospital, until he was able to be carried to jail. The Sheriff of Washington County has placed guards over him.

"I am informed that this County will probably decline to pay for the treatment of this prisoner, thinking that it is Washington County's duty to pay all expenses.

"Will you please give me a written opinion as to which County should pay for the hospitalization and treatment of the prisoner. There seems to be some doubt in the minds of some County officials here, on the ground that the prisoner was not ill before he was arrested, and because it was necessary to use such force as to injure him in making the arrest, the County would not be liable."

In answering your request above, I call your attention to an opinion of this office written October 6, 1930 to the Sheriff of Dallas County. Biennial Report of Attorney General 1930-1932, page 3. This opinion answers your question as to the liability of the County for hospital services, in a case on all fours with the one you have here and I am extending it in order to answer your further question as to which County is liable for the bill.

It is my opinion the County of Washington is chargeable with the hospitalization, as the defendant is a prisoner of Washington County, and not Marengo County. It is true the defendant was wounded by the officers of Marengo County while attempting to arrest him, but this was on a warrant from Washington County, charging an offense committed in Washington County and one for which he would have to be tried in Washington County and not Marengo. It is true it was the duty of the Sheriff of Marengo County to make the arrest for the Washington authorities, but in my opinion, in doing so, he did not make his county responsible for what happened in attempting to make the arrest. No more than if the Sheriff of Washington County had pursued the defendant into Marengo County in attempting to arrest him, had to wound him. The act of the Sheriff of Marengo County was merely courtesy extended to the County of Washington.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. L. Kaufman, Chairman,
Unemployment Compensation Commission,
Capitol.

Unemployment Insurance—Employee specifically exempted, because of type of employment, from the operation of the Acts of 1935 p. 950 held not permitted to elect to become subject to the Act.

1. Employer specifically exempted held not permitted by election to become subject to the Act or to bring exempted employees under operation of the Acts.

2. Contributions by employees governed by Section 4 (d) of Senate Bill 125-Stephens, Special Session of 1936.

(a) Held employees entitled to refund of contributions withheld from wages by employers prior to May 1, 1936.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of February 29, 1936 and your letter of May 8, 1936, requesting my opinion respectively as follows:

"(1) Under the Alabama Unemployment Compensation Act (House Bill No. 447) can an employee who is specifically exempted from the operation of the Act, under Section 2 (g), by election become subject to the Act?

"(2) Whether an employer of persons specifically exempted can by electing to become subject to the Act, bring his exempted employees under the operation of the Act?

"(3) Under Section 2 (f), it is set out that 'such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January 1st, of the calendar year in which such employment occurs'. Section 4 (d), states 'each employee shall contribute to the fund one per centum of his wages'. Is it possible for this Commission, by a rule or regulation, to say that even though an employer's status is retroactive as of January 1st, the employees will be required to make payment of contributions only from the time it is definitely determined that his employer is subject to the Act? Also, under Section 4 (d), would it be legal for this Commission to rule that contributions by employees shall not begin until January 1, 1937, this for the reason that no time is specified when the employee's contributions shall begin?

"If question (3) can be answered in the affirmative it will be of material benefit to the Commission in the working out of this Unemployment Compensation Act. It would also meet with the hearty approval of the Social Security Commission.

"The Alabama Unemployment Compensation Act, approved by Governor Graves September 14, 1935, provided that (Section 4 (d)): 'each employee shall contribute to the fund (1%) one per centum of his wages.'

"On April 21, 1936, Governor Graves approved Senate Bill 125. This Senate Bill 125, amended Section 4 (d) of the Act to read as follows: 'Each employee shall contribute to the fund (1%) one per centum of his wages earned after May 1, 1936', etc.

"The Alabama Unemployment Compensation Commission has never called for nor collected any contributions from employees or employers. Numerous employers write and inquire whether they should refund to their employees deductions withheld from wages earned from their employees prior to May 1, 1936.

"There were many long distance telephone calls to the Commission, the morning after this amendment was signed, inquiring whether refunds could be made. I advised them, in accordance with the enclosed bulletin which was sent out, that so far as the Commission was concerned refunds could be made.

"Should this Commission inform such employers so inquiring, that they can refund to their employees deductions withheld on wages earned before May 1, 1936?"

Since the Unemployment Compensation Law (Acts 1935, p. 950) was amended by an Act approved April 21, 1936, Special Session of the Legislature, I have incorporated both requests into the instant opinion and have thereby eliminated question three of your letter of February 29th, which question appears in substance in your letter of May 8th.

I have numbered all of your questions contained in both letters in consecutive order.

In reply to your question numbered 1, I wish to advise that in my opinion same should be answered in the negative. Section 2 (g) of the Acts of 1935 p. 950 generally known as the Unemployment Compensation Law as amended by Senate Bill 125—Stephens, approved April 21, 1936, provides in part as follows:

> "The term 'employment' shall not apply to: (1) Agricultural labor; (2) Domestic service in a private home; (3) Service performed by an officer, bar pilot or member of the crew of a vessel on the navigable waters of the United States; (4) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother; (5) Service performed in the employ of the United States Government or of an instrumentality of the United States; (6) Service performed in the employ of a carrier engaged in interstate commerce and subject to the Act of Congress known as the Railway Labor Act; as amended or as hereafter amended. Service performed by those engaged as Solicitors or agents for Insurance Companies. (7) Service performed in the employ of a state, or political subdivision thereof, or an instrumentality of one or more states or political subdivisions; (8) Service performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual."

You will note that the types of employment here named are specifically excluded by the terms of the law itself. Subsection (e) of Section 2 of this Act defines employee in the following language:

> " 'Employee' means any person employed by an employer subject to this act and **in employment subject to this act.**

Construing these two subdivisions together the legislative intent is clear that a person who is employed in those occupations which are specifically exempted from the operation of the Act cannot become subject to the terms of the Act by election.

In my judgment your second question must be answered conditionally. The law contemplates two different types of exempted employers. Section 2 (f) defines employer in part as follows:

> " 'Employer' means any person, partnership, association, corporation, whether domestic or foreign, or the legal representative, trustee in bankruptcy, receiver, or trustee thereof, or the legal representative of a deceased person, who or whose agent or predecessor in interest has employed at least eight persons in employment subject to this Act within each of twenty or more calendar weeks in the year 1935 or any subsequent year; provided that such employment in 1935 shall make an employer subject on January 1, 1936, and such employment in any subsequent calendar year shall make a newly subject employer subject for all purposes as of January first of the calendar year in which such employment occurs."

The last sentence in the above subsection (f) is as follows:

"Any employer (of any person within the state) not otherwise subject to this Act shall become fully subject hereto, upon filing by such employer with the commission of his election to become fully subject hereto for not less than two calendar years, subject to written approval of such election by the commission."

When this sentence is construed with the remainder of this section, it is readily seen that the legislature intended to provide a means for employers, who seek to bring the benefits of this law to themselves and to their employees, to elect in accordance with terms of the law, to subject themselves and their employees thereto, even though they do not employ the required number of employees.

It must be presumed, however, that any specifically exempted employer may not elect to come under the terms of this law. Section 2 (g) as amended, referred to supra, specifically exempts from the terms of the law certain occupations in which employers are not given the privilege of electing to come within the terms of the Act.

In my opinion your third question should be answered in the affirmative. You will note that the Act of 1935, p. 950, provides for contributions of employees in the following language: (Acts 1935, p. 956)

"(d) Contributions by Employees. Each employee shall contribute one per centum of his wages."

No date as of which the employee contributions shall be paid is specified in the terms of the 1935 Act. In my judgment the 1935 Act, supra, sets the amount of the contributions due by the employees, but because of its failure to specify a definite date for payment of these contributions, the same did not become due and payable under the said 1935 Act.

Senate Bill 125—Stephens approved April 21, 1936, in my judgment, cures this defect as of or subsequent to May 1, 1936, as follows:

"Section 4 (d). 'Contributions by Employees'. Each employee shall contribute to the fund one per centum of his wages earned after May 1st. 1936, and after the date as of which the conditions determining whether or not his employer is or will be subject to the Act have been fulfilled. Each employer shall be responsible for withholding such contribution from the wages of his employees, shall show such deduction on his payroll and records, and shall transmit all such contributions to the fund pursuant to general Commission rules."

Premises considered it is my opinion that employers withholding any deductions from employees' wages as of dates prior to May 1, 1936, should refund to said employees.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. E. Corbin,
Deputy Circuit Clerk,
Marshall County,
Albertville, Alabama.

All fines are now payable in money only, except as may be otherwise provided.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 13, 1936, in which you request my opinion as follows:

"Please advise me whether or not, I, as Deputy Clerk of the Circuit Court, could accept certified Claims in payment of fines. Mr. A. made bond here for a $200.00 fine, paid the cost in Money and upon the issuance of an execution for the fine, he tenders $200.00 worth of Certified Forfeiture Claims, signed by the Judge, but there is no money in the fine and forfeiture fund, and these Certificates were certified in 1933."

You cannot accept script, in other words, state witness certificates, in payment of fines. I call your attention to Section 4038, Code of Alabama, 1923, which is as follows:

"4038. Fines to go to County, and Judgment accordingly.—All fines and forfeitures shall be paid in money, and shall go to the county in which the indictment was found, or the prosecution commenced, unless otherwise expressly provided; and judgment therefor must be entered in favor of the state, for the use of the particular county."

Quarterly Report of Attorney General Oct.-Dec. 1935, p. 37.

Quarterly Report of Attorney General Oct.-Dec. 1935, p. 116.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. John P. Kohn,
Associate Commissioner,
State Tax Commission,
Capitol.

Foreign corporation—permit fees and franchise taxes—liable for taxes where holding title and buying and selling real estate in Alabama as Trustee of Virginia corporation.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of recent date in which you request my opinion as to whether refund of certain franchise taxes and permit fees paid by the Madison Investment Company, a foreign corporation, incorporated under the laws of the State of Virginia and qualified to do business in Alabama, should be granted this company. It appears from a close examination of the nature of the business conducted by the Madison Investment Company in Alabama, that it does not merely hold legal title to property for the bondholders of the defunct Richmond Mortgage and Loan Corporation, but is in fact engaged in the buying, selling and trading of real estate.

Section 315 of the Revenue Bill of 1935 provides for a foreign corporation permit fee "upon the capital employed in this State of such corporation."

Section 318 of the Revenue Bill provides for a franchise tax on foreign corporations of $2.00 on each $1000 of actual amount of **capital employed** in this State.

In my opinion, the Madison Investment Company is "employing capital" within the State of Alabama so as to be liable for the franchise taxes and permit fees imposed by the section cited supra.

In **Investor's Syndicate v. State,** 149 So. 83, 227 Ala. 216, the Supreme Court of Alabama deals with a quite similar situation. In this case, in computing the franchise tax of the Investor's Syndicate, an assessment was made on the book value of the property assessed for taxation in Alabama by the Investor's Syndicate. The property was real estate acquired by the Investor's Syndicate by the foreclosure of mortgages on Alabama Real Estate. The mortgages secured loans of money made by the Investor's Syndicate in Alabama and were secured by mortgages on such real estate. The mortgages became delinquent and under power of sale contained therein, the Investor's Syndicate as mortgagee, foreclosed and purchased the properties at the foreclosure sale. The Investor's syndicate held title to said properties subject to redemption rights and offered said properties for sale for the purpose of recovering and obtaining the amount of the mortgage loans.

Justice Bouldin, speaking for the Supreme Court, held that:

> "While these holdings represent investments made in the first instance by such mortgage loans and while so invested, were included under the statute as capital employed in Alabama, I conclude **a different status must be accorded them when they become capital employed in dealing with lands by foreclosure, purchase and disposition of same."**

In my opinion, when the Madison Investment Company engages in the buying, selling and trading of the real estate to which it has taken title from the bondholders of the defunct Richmond Corporation, it comes within the rule announced in the Investor's Syndicate case and therefore, is not entitled to the refund for which it has petitioned.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. F. Posey,
Judge of Probate,
Autauga County,
Prattville, Alabama.

Elections—Judge of Probate has no authority to transfer a voter's name from one precinct to another within the county unless requested to do so by said voter, such transferring being within the province of the Board of Registrars.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of March 21, 1936, in which you present the following inquiry:

> "When a qualified voter moves from one precinct to another in the County, does the Judge of Probate have the right and is it his duty to transfer this voter from one precinct to another, (provided of course this voter has lived in the precinct to which he moved more than three months prior to the election)?"

In answer to your inquiry, I am of the opinion that the Judge of Probate does not have authority to transfer a voter's name from one precinct to another unless requested to do so by the voter, such being a matter exclusively within the province of the Board of Registrars.

This office has heretofore held that where persons are duly registered as electors by the Board of Registrars, the Judge of Probate is without authority to strike the names of such persons from the list of registered voters, even though affirmative irregularities in the matter of residence qualifications are shown.—Opinion of Attorney General to Judge of Probate, Montgomery County, March 13, 1935, and cases cited therein.

Reasoning by analogy, it is my opinion that the Judge of Probate does not have the authority to transfer the name of the voter from one precinct to another within the county even though affirmative irregularities in the matter of residence qualifications are shown. Such is a matter within the exclusive province of the Board of Registrars. A voter is not required to re-register on changing his residence from one precinct to another in the same county.—**Section 385, Code of 1923; Sellers v. Commissioners Court, 165 Ala. 338, 51 So. 795.**

In this connection, I wish to call your attention to the fact that one is entitled to vote only in the precinct of his electoral residence, although he may be registered in another precinct. Section 488 of the Code of 1923, provides as follows:

> "488. Elector must vote in county and precinct of residence.—At all elections by the people of this state the elector must vote in the county and precinct of his residence and nowhere else, and must have registered as provided in this chapter; and if any elector attempts to vote in any precinct other than that of his residence, his vote must be rejected, except as provided in section 361 (290) of this Code."

When a voter whose name appears on the list of qualified voters as residing in one election precinct but who has removed to another and has resided therein for a period of three months or more he should vote in the latter precinct. His name not being on the qualified list, he is subject to challenge and it is the duty of the election officers to challenge and require the challenged voter's oath to be taken before such party may vote.

However, under Section 488 above quoted he has no right to vote except in the precinct of his residence and it is the duty of the election officials to reject any person attempting to vote in a precinct other than that of his residence even though his name appears on the qualified list of a precinct other than that of his actual residence.

Any doubt as to the proper authority to make the transfer is in my judgment removed by Act No. 460 approved Sept. 13, 1935 (Acts 1935, p. 989) amending Section 392 of the Code, specifically requiring the Board of Registrars to transfer the name of an elector on the registration list to the precinct of his residence.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. Sidney J. Gray, Member,
Mobile County Board of Registrars,
57 St. Francis Street,
Mobile, Alabama.

Elections—Registration.

1. Acts of 1935, page 1120 held repealed by House Bill 171-Waldrep, approved April 21, 1936, in so far as the two are in conflict.

2. Mobile County Board of Registrars held to be governed by Acts of 1935, p. 981.

3. Notice as provided for by Section 393, Code of 1923, as amended by Acts of 1927, page 276, held applicable to Mobile County.

Opinion by Assistant Attorney General Small.

Dear Sir:

I have your letter of April 18th, 1936, requesting my opinion as follows:

"The 1935 Legislature passed an Act providing that the Board of Registrars in counties with a population of 100,000 to 300,000 shall be in session for registering voters from the 1st day of October through the 1st day of February and shall be in session for thirty days beginning the 1st Monday in April for purging the voting list and provides further for six days for hearing objections to striking names from the registration list, beginning first Monday after expiration of one week from the thirty day period. This classification takes in Mobile County. Acts 1935 pages 981 and 982.

"Acts 1935, page 1120, sets out certain periods in which the Board of Registrars shall be in session including the 4th Monday in June and the 1st Monday in August.

"Please give us your opinion as to whether or not this Act, which is a general Act, applies to Mobile County and whether or not the Board of Registrars of Mobile County shall be in session on the 4th Monday in June for ten days and the 1st Monday in August for ten days for registering voters.

"Please give us your opinion as to what periods and for what purposes the Board of Registrars of Mobile County should be in session under the present laws.

"Acts of 1935, page 989 provides that where sufficient evidence is furnished that any elector has permanently moved, from one precinct to another the Board of Registrars shall transfer name of elector to the registration list to the precinct to which such elector has moved. Does this apply to Mobile County and if so, should the transfers be made when the Board is sitting for registering or for purging or could the transfer be made at any time the Board of Registrars is in session for any purpose?

"We do not find any provision for giving notice to any person whose name we propose to purge from the voting list on any ground other than for conviction or illegal registration, either by summons, mailing notice, or by publication. It seems that where we propose to strike a name from

the list, for instance, on the ground of being a non-resident, that some notice should be given either by mail or by publication. Please give us your opinion as to what notice, if any should be given persons whose names we propose to strike from the voting list.

"There has been some complaint in this County in the past by some persons whose names were stricken from the voting list, who were not given any notice and who could have satisfactorily established the fact that they were only temporarily away from the County if they had had an opportuntiy to appear before the Board."

In reply, I wish to advise that the Acts of 1935, page 1120 in so far as the same conflicts with House Bill 171-Waldrep, approved April 21, 1936 is repealed. I wish to further advise you that House Bill 171-Waldrep, supra, provides in part as follows:

"***except that in counties having a population of more than 110,000 and not more than 150,000 according to the last or any subsequent Federal census, this act shall not apply."

It is my understanding that this population provision removes Mobile County from the expression of the above named 1936 Act, and in my judgment, Mobile County is governed by House Bill 330-Staples, approved September 13, 1935 (General Acts of 1935, p. 981). Sections 1 and 2 of this Act provide as follows:

"Section 1. That in all counties in this State which may now or hereafter have a population of not less than 100,000 nor more than 300,000 according to the last or any succeeding Federal census, the Board of Registrars shall meet at the Courthouse on the first day of each October and hold daily sessions (Sundays and legal holidays excepted) from and including said date through the succeeding February 1st, for the purpose of registering voters. Said board shall also meet on the first Monday of April of each year and remain in session daily for thirty days (Sundays and legal holidays excepted) for the purpose of purging the registration lists and shall again meet each year on the first Monday after the expiration of one week from the expiration of said last mentioned session and shall remain in session daily for six days for the purpose of hearing objections to striking names from the registration lists.

"Section 2. Said sessions of the Board of Registrars in all such counties shall be in lieu of all other sessions now authorized by law."

In my judgment, the periods and purposes of meetings of the Board of Registrars of Mobile County provided for by Acts of 1935, page 981, supra, constitutes the only meetings by the said Mobile County Board of Registrars for any purposes now contemplated by the law.

The Acts of 1935, page 989, provide that the Board of Registrars shall meet on the first Monday in January, 1936, and each two years thereafter for purging the poll list and may continue in session one week. You will note that both of the above referred to Acts were enacted by the same legislature and both approved on the same day; viz., September 13, 1935, but it must also be noted that House Bill 330-Staples (General Acts of 1935, page 981) Section 5 provides that:

"This Act shall become effective on the first day of October next after its passage,"

while the Act on page 989, General Acts of 1935, becomes effective upon the date of its passage. (See 59 Corpus Juris, p. 1150. See also **Jemison v. Town of Fort Deposit,** 108 So. 396, 397 and authorities cited thereunder.)

The rule governing construction of statutes under these circumstances is stated as follows:

> "****an act going into effect immediately will prevail over an act passed before it but going into effect later."

(See 59 Corpus Juris, p. 1055 and authorities cited therein.)

The Acts referred to here are in conflict in part. The Acts of 1935, p. 981, however, Provide that:

> "Section 4. All laws and parts of laws in conflict herewith are expressly repealed."

Premises considered, it is my opinion that in so far as conflicts exist, the terms of House Bill 330-Staples, Acts of 1935, p. 981 will prevail and that the Board of Registrars are authorized to meet only on the dates and for the purposes therein specified, however, consideration must be given to the rule of statutory construction, viz., that statutes passed at the same session of the Legislature must be construed in pari materia giving both statutes a field of operation if possible. I refer you to 59 Corpus Juris, page 928, paragraph 533, and page 1053, paragraph 622, which read in part respectively as follows:

> "(Sec. 533) (h) Acts Passed at Same Session - aa. In General. The principle that a repeal by implication is not favored by law is especially applicable as between two statutes passed at the same session of the legislature. Also, where two acts relating to the same subject matter are passed at the same legislative session, there is a strong presumption against implied repeal, and they are to be construed together, if possible, so as to reconcile them, give effect to each, and thereby avoid an implied repeal, rather than to infer that one destroys the other;"
>
> "(Sec. 622) (c) Statutes Adopted at Same Session. The rule that statutes in pari materia should be construed together applies with peculiar force to statutes passed at the same session of the legislature; especially where they are passed or approved on the same day, or where one refers to the other, or is declared to be cumulative. It is to be presumed that such acts are imbued with the same spirit and actuated by the same policy, and they are to be construed together as if parts of the same act. They should be so construed, if possible, as to harmonize, and give force and effect to the provisions of each;"

See also State ex rel. **Sellers vs. Murphy,** 92 So. 661;**Marengo County vs. Wilcox County,** 215 Ala. 640.

A further rule of statutory construction, which in my judgment vitally concerns the instant question, is found in the case of **Levy, Aronson & White vs. Jones,** 208 Ala. 104 where the court said:

> "If effect can, however, be given, consistent with the legislative intent, to a part of the provisions of the old statute, without violation of the provisions of the new, repeal by implication of the old statute by the new will be held to be only partial — to the extent of the modification of the conflict."

The Acts of 1935, page 989, you will note, is a general law applicable to every county in the State not otherwise excepted therefrom. In my judgment, this Act is applicable to Mobile County in all parts except where a direct conflict with the Acts of 1935, page 981 exists, in which case the latter act prevails. You will note that the Act on page 981, supra, provides a different date for purging the list from the date provided for in the Act on page 989, supra, and is, therefore, controlling in this particular. The other provisions of the Act on page 989, however, in my judgment are not in conflict and, therefore, apply to Mobile County.

You ask specifically when the Board of Registrars may transfer the name of any elector in accordance with the mandate contained in the Acts of 1935, page 989, supra. In my opinion, this transfer may be made at any time the Board is in session upon the presentation of sufficient evidence in accordance with the provisions of the above named act. You will note that the law specifies no certain session of the Board of Registrars at which this action must be taken.

In reply to your last question concerning notice, I wish to refer you to Section 393 of the Code of Alabama of 1923 as amended by the Acts of 1927, page 276, which provides as follows:

> "393. Notice and hearing when names are to be stricken from list.—When the name of any elector is proposed to be stricken from the registration list, unless he or she is dead or is a non-resident of the state, notice shall be issued to him or her by the board of registrars, citing him or her to appear before the board on the second Monday in February following, and show cause why his or her name should not be stricken from the list. Said notice shall be served by the sheriff at least five days before the second Monday in February. The board of registrars shall in addition to the above notice give notice in some newspaper published in the county by one insertion."

You will note that the only provision contained in the above Section 393 in conflict with the Acts of 1935, page 981, supra, is the provision for different dates set for purging the list. Under the rules of construction announced in the case of **Levy, Aronson and White vs. Jones,** supra, it is my opinion that the notice provided for in Section 393 is applicable to Mobile County, and that such notice should be given five days before the date of hearing objections as provided for by the Acts of 1935, page 981.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. J. F. Aldridge,
Solicitor, Green County,
Eutaw, Alabama.

Schedule 12 of the Revenue Bill of 1935 relative to dealers in automobiles, motor cars, or other self propelled vehicles held to include dealers in self propelled "farm tractors."

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 16, 1936, in which you request my opinion as follows:

"Schedule 12, page 445 of the Revenue Act of 1935, provides as follows:

" 'Upon each and every agent of and / or dealer in, and upon every person soliciting orders for the sale or purchase of automobiles, motor cars, or other self propelled vehicles, except motorcycles.'

"The Tax Department is construing this section to include farm tractors. I do not so construe it, and it is my opinion that the farm tractor is not a vehicle within the meaning of this statute. I also think that a reading of the entire section bears out this contention.

"I wish you would advise me in reference to this matter, as I am going to be called upon by the License Inspector to construe this section, and I want your opinion in reference to the same."

In my opinion a person, etc. dealing in or taking orders for the sale of farm tractors should be cited for the license imposed by Schedule 12, p. 445 of Revenue Bill of 1935. This schedule provides in part as follows:

"Upon each and every agent for and / or dealer in, and upon every person soliciting orders for the sale or purchase of automobiles, motor cars, **or other self propelled vehicles,** except motorcycles, and except any person regularly employed by a said agent, of, and / or dealer in, which said agent of, or dealer in, has paid the privilege tax or license herein provided for, the following privilege or license tax shall be levied and collected, for each place of business, to-wit: etc."

You will note that the schedule provides that dealers in or persons soliciting orders for "other self propelled vehicles" shall be liable for the license along with those engaged in the similar business with regard to automobiles and motor cars.

A combined threashing machine and cleaner mounted on an axis and wheels has been held to be a "vehicle". Vincent v. Taylor Bros. 168 N. Y. S. 287, 288, 180 App. Div. 818. See also Sant. v. Continental Life Ins. Co. of St. Louis, Mo. 291, pp 1072, 1074 (Idaho) holding that a horse drawn road grader is a "vehicle".

The Schedule in question does not purport to license the use of the farm tractor, but only the sale of such a vehicle. A consideration of Schedule 12 and in particular that provision requiring a license for dealers etc. in "other self propelled vehicles" can lead but to the inevitable conclusion that a farm tractor, which I assume is self propelled, is a "vehicle" within the meaning of said schedule, and therefore that one who deals in this type vehicle is subject to the license imposed by said Schedule 12.

The opinion found in Biennial Report of the Attorney General 1918-1920, p. 607 being in conflict herewith is hereby overruled.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. S. E. Deal,
Tax Collector,
Tuscaloosa County,
Tuscaloosa, Alabama.

Tax Collectors—

That part of Section 161-A of the 1935 General Revenue Act fixing limitations on the amount to be expended for expenses is applicable to the term beginning October 1, 1935.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter written some time ago in which you state:

"I shall thank you to furnish me an immediate opinion as to the interpretation and effect of the following:

"Do the limitations as set out in House Bill 324 (Revenue Bill) pertaining to salaries for Clerks, typists, stenographers, and other expenses, become effective against the present tax collectors, or do the limitations apply after the term of office beginning with the first of October, 1935, expires, as the act reads in Section 161-A."

It is my judgment that that portion of Section 161-A fixing the maximum amount for expenses applies to the term of office beginning October 1, 1935 as well as to the term beginning October 1, 1939.

While the statute is loosely drawn from a consideration of the whole of it, I am of the opinion that the foregoing is the intent of the statute.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. Roy Johnson,
Tax Assessor,
Jefferson County,
Birmingham, Alabama.

Taxation.

1. Assessment of property in the name of administrator, executor or trustee, where legal title to the same reposes in the person to whom it is assessed, is legal and proper.

2. In the event a taxpayer returns list of his property for taxation, and in making the assessment, an error is made which invalidates the same, a penalty should not be charged upon reassessment.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

I have your request for opinion as follows:

"Mr. Thomas from the Comptroller's office came to my office and showed me a long list of tax sales that had been set aside, and said the reason they were set aside was because they were illegal assessments, e.g.

First National Bank, Trustee, under Trust Deed No. 634
or
John Jones, Administrator
or
John Jones, Executor
or
John Jones, Agent

"Mr. Thomas said that your office had ruled that all assessments made like this heretofore were illegal and that the State Land Office was setting these sales aside as far back as 1918. He further stated that an assessment made, e. g. as Mrs. **Roy** Johnson was illegal and that it should be made as Mrs. **Elinor** Johnson. If this be true and you rule that such assessments are illegal, it will entail at least thirty days work on the part of this office and the setting aside of thousands of assessments, as this has been the practice, as far as I can ascertain, for many years and 1936 assessments are no exception.

"We would like to have further advice as to whether we should charge a 10% penalty on assessments if set aside when made as above. It would seem to me that these people have shown that they want to assess, therefore no penalty should be charged."

Many of the questions involved in your request have been answered in a recent opinion of this office addressed to Hon. Chas. W. Lee, State Comptroller, under date of June 24, 1936, a copy of which is transmitted herewith.

In my opinion, an assessment of the property of a married woman in her husband's name with the word "Mrs." prefixed thereto (for example, Mrs. Roy Johnson) is entirely legal and proper.

Further answering your request, I am of the opinion that no penalty should be added if an assessment is set aside on account of illegality thereof and a new assessment made. The duty to make an assessment is upon the Tax Assessor. The taxpayer's duty is merely to return a list of his property for taxation.

See Chapter 2, Acts 1935, page 256.

When a return has been made in due time by the taxpayer, he ought not to be penalized. Of course, at the time the taxpayer lists his property for taxation, the Tax Assessor may make any pertinent inquiries concerning the property so listed as he deems fit and proper, in order that he may perform his duty by making a legal assessment of the same for taxation.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 24, 1936.

Hon. Chas. W. Lee,
State Comptroller,
Capitol.

Taxation—assessment may be corrected during the tax year, by entry thereon of the name of owner of the lands, at any time before Probate Court enters decree of sale.

Opinion by Assistant Attorney General Rowe.

Dear Sir:

Receipt is acknowledged of your request for opinion as follows:

"Real estate is assessed, let us say, in the name of John Doe, Agent, or Trustee, or Administrator, or Executor, etc. The assessment is lawfully made, sworn to and subscribed before the Tax Assessor:

"QUESTION. Can such assessments be amended in order to assess the property in the name of the rightful owner at any time prior to the date of decree for sale for taxes?"

In my opinion, the assessment may be corrected during the tax year at any time prior to the date of the Probate Court decree, ordering the lands sold for delinquent taxes. Of course notice required by law must be served upon the "rightful owner" of the property after the assessment is amended, in order that the Probate Court may acquire jurisdiction.

In Albertville v. Hooper, 72 So. 258, the Supreme Court approved the following definition of the term "assessment" viz:

"The term (assessment) commonly includes two distinct processes: First, the preparation of a list of the proper officers, comprising a description of all the persons or property found within the jurisdiction, and liable to contribute to the particular tax; and second, an estimate by the assessors of the value of the property, of whatever character it may be, which is to be called on to contribute, thus forming the basis of an apportionment of the whole tax among the taxable persons within the district. The list, when thus completed, is usually denominated the 'tax list' or 'assessment roll'." Black on Tax Titles (2nd), Sec. 89.

"The assessment is an indispensable prerequisite to the validity of a tax against an individual, for without a valid assessment there can be no lawful attempt to collect the tax or to enforce it against any specific property. Mere irregularities in the assessment will not affect its validity, but only such ommissions or defects as go to the jurisdiction of the assessors, "or deprive the taxpayer of some substantial right." 37 Cyc. 987b.

See also State v. Doster, Northington Drug Co. 196 Ala. 447.

In your request for opinion, assessments made in the name of an agent, a trustee, an administrator and an executor are dealt with as if the status is the same as to each. This is not true. An assessment made by and in the name of an agent shows on its face that the person in whose name it is made is not the holder or owner of the legal title. An executor, administrator or trustee may hold legal title to the property assessed for taxation. The Courts have held that where property is assessed for taxation, merely to the "estate" of a decedent (naming him), there is no valid assessment and that no valid tax sale can be made thereupon.—Scott v. Brown, 106 Ala. 604, and cases there cited. But, if lands are assessed for taxation as the property of John Doe, as administrator (or executor or trustee) of Jane Doe, and if the person to whom assessed owns the legal title, in my judgment, there is a compliance with requirements of law and a valid sale may be based on such an assessment. See Sections 143, 152 Revenue Compilation of 1929; Sections 31 and 40, Acts 1935, p. 256.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. O. L. Andrews, Clerk,
Tenth Judicial Circuit,
Birmingham, Alabama.

1. Under Section 4910, Code of Alabama 1923, if the defendant is convicted for larceny, embezzlement, etc., the items of property, the subject of the crime, are assessed (as to value) and collected as other costs.

2. Where the defendant is sentenced to the penitentiary, the Clerk should issue execution against the defendant for the portion of the costs not paid by the State under Section 3667, Code of Alabama, 1923.

3. Where defendant was convicted of a misdemeanor and appeals to the Appellate Court, the cost of the appeal cannot become a part of the sentence and execution should issue against the defendant for this cost.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of November 29, 1935, in which you request my opinion as follows:

"Will you please give me your opinion on the following questions:

"1. A defendant is convicted of larceny or like offense and the court or jury fixes the value of the property stolen as provided by Section 4910 of the Code of 1923. If the defendant is sentenced to the penitentiary or to hard labor for the County should the Clerk issue an execution against the defendant for the assessed value of the property?

"2. If a defendant is sentenced to the penitentiary should the Clerk issue an execution against the defendant for that portion of the costs not paid by the State under Section 3667?

"3. In Jefferson County there is a local act under which the County is not required to pay the costs where defendant is sentenced to hard labor for the County. Should the Clerk issue an execution against the defendant for the costs?

"4. Where a defendant is convicted and appeals to the Appellate Court it is my understanding that the cost accruing on appeal cannot be charged against defendant where he is sentenced to hard labor for costs, but can only be collected on execution issued against defendant. Is this correct?"

Answering your first request, I call your attention to Section 4910, Code of Alabama, 1923, which is as follows:

"Judge for Value of Stolen Property on Conviction of Larceny and Like Offenses.—When the defendant is found guilty of larceny, obtaining property under false pretenses, embezzlement, and all offenses punishable like larceny, the court, justice or jury trying the issue, unless the property has been returned or the value thereof paid to the owner, must assess the value of each article, and such assessed value shall be made an item of costs in the case, and shall be paid in like manner as the other costs taxed against the defendant, and the clerk of the court shall issue a certificate to the owner of the property for the value of such property as

assessed by the court or jury. The amount of such assessed value must not be included in any bill of costs paid by the state, or for which a defendant is sentenced to hard labor."

You will note that where a defendant is charged with an offense set out in the above quoted section, it becomes the duty of the Judge, jury or justice trying the case, to assess the value of each item of property separately, and unless the property has been returned or the value thereof has been paid to the owner, such value is made an item of costs in the case and shall be paid in like manner as other costs taxed against the defendant. But your inquiry is, if the defendant is sentenced to the penitentiary or to hard labor for the county, then how paid? If sent to the penitentiary, the State pays only such items of costs as are set out under Section 3667, Code of Alabama, 1923, and I find no provision under the Section, supra, for the State paying this item of costs. This being the case, in my opinion, you should issue execution against the defendant for this item, and the same rule would apply that applies in cases where the convict is sentenced to hard labor and turned over to the State under Act approved February 18, 1927, (General Acts, 1927, page 52.) But in Jefferson County, your convicts who are sentenced to hard labor are not turned over to the State but are worked by the county on the public roads. But this would make no difference, the county could not be made liable for this item of costs, that is, the assessed value of the property, the subject of the crime. This item of cost can only be collected by execution against the defendant and is not subject to be classed as cost paid by the State or county.

The statute says plainly that this item of costs shall not be included in the bill of costs paid by the State, but Jefferson County does not send her county convicts to the State, therefore, the question naturally arises, how does this law affect Jefferson County? I think it suffices to say that if the State is not required to pay, the same rule will apply to the County and this cost or damage, whichever you might term it, can only be collected as suggested above by execution against the defendant.

My answer to your second inquiry is in the affirmative. Biennial Report of Attorney General 1930-32, p. 965.

My answer to your third inquiry is in the affirmative, but only for the amount not worked out by the convict. If he has worked it all out, then you are without authority to issue execution—.Report of Attorney General 1930-32, p. 965.

My answer to your fourth inquiry is in the affirmative. Quarterly Report of Attorney General October-December 1935, p. 189.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. F. B. Thompson,
Judge of Probate, Clay County,
Ashland, Alabama.

Counties—share of gasoline tax cannot be used to aid erection of hospital.

Opinion by Assistant Attorney General Screws.

Dear Sir:

I have your letter of June 5, 1936, which is as follows:

"The Court of County Commissioners of Clay County is contemplating the erection of a county hospital, with the aid of funds to be granted by the Federal Government through the Public Works Administration.

"Kindly advise me, first, whether the court can appropriate and use any money on hand derived from the county's share of the gasoline tax collected by the state and divided among the several counties of the state for such purposes. Second, advise me if the county can borrow money to match such federal grant and appropriate, or pledge any part of the county's share of the gasoline tax collected by the state and divided among the several counties for the payment of such obligation, and the interest thereon."

I am of the opinion that both your inquiries should be answered in the negative. The use of gasoline tax is now governed by Sections 156.9, 156.10, 156.11 of the Revenue Act of 1935, with the exception of special or local 1936 Acts dealing therewith. The special or local 1936 Acts above referred to have no bearing on the instant inquiry.

Schedules 156.9 and 156.11 of the Revenue Act of 1935, pp. 318 and 320, provide for the expediture of the county's share of the gasoline tax received from the State.

Schedule 156.9 of the Revenue Act of 1935, imposes a two cents tax, one cent of which is equally divided among the sixty-seven counties of the State. The use of the proceeds of the one cent tax by the county is as follows:

"Such funds when received by the County Treasurer shall be covered into the county road and bridge fund, and shall be **expended exclusively in the construction, maintenance and repair of the public roads and bridges in such county.**" (Italics supplied)

Schedule 156.11 provides for the use of the one cent tax distributed to the sixty-seven counties in the following manner:

"***and said funds shall be used by the several counties of the State exclusively for the **construction, maintenance, supervision and policing of the public roads and bridges in the respective counties**; provided, however, that the Board of Revenue or other such governing body of a county may direct the State Tax Commission to pay over to the State Highway Department such part of said funds as may be agreed upon by the Board of Revenue or such other governing body of any county, and the Governor of the State of Alabama, which said funds **are to be used in the construction and maintenance of roads in said county,** to be agreed upon by the Board of Revenue of such county, or such other governing body, and the Governor of the State of Alabama." (Italics supplied).

It is evident from the above that no part of the gasoline tax funds can be used in aiding the construction of a hospital, as such would not be for the construction, maintenance, supervision and repair or policing of the public roads or bridges in said county. In this connection I wish to refer you to

Quarterly Report of the Attorney General, Vol. I, pp. 6, 128 and 186; Quarterly Report of the Attorney General, Vol. II, pp. 114, 347.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. Edgar Underwood,
Judge of Probate,
Franklin County,
Russellville, Alabama.

If a County is at or above its constitutional debt limit, it cannot borrow money or create debt.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 21, 1936, in which you request my opinion as follows:

"Will you please render to me your opinion on the following question, at your earliest convenience:

"Due to the expension of duties devolving upon the county to meet the needs provided by law, this county has had to lease offices 'down town' and away from the court house, for the Health Department, the Superintendent of Education and the department set up by the Welfare Board, formerly the Child Welfare Department and with the demand made on the county Agricultural Agent's Department the Court of County Revenue was confronted with the proposition of leasing offices 'down town' or making further provision at the courthouse by additional space for this department; and with the establishment of the law and Equity Court for this county a few years ago, it was necessary to provide a room for the judge thereof; the county records had greatly out grown the vault provided for them in 1890 (more of a dungeon than a vault).

"The Court of County Revenue, several months ago, made a check up of this situation and decided that with the aid of the Works Progress Administration the courthouse could be remodeled and an annex built that would house all the county's departments of government, and give an adequate vault space which had become imperative.

"The Court of County Revenue, with the aid of the Works Progress Administration begun this necessary improvement and it is now in progress.

"This county is bonded to the constitutional debt limit and it was the plan of the court to defray the county's part of this expense by temporary loans, which can be liquidated in probably two or three years.

"In setting up the budget for the county last fall, it was impossible to make adequate provisions for this construction expense. We find that we are limited in negotiating temporary loans to 95% of last year's amount, which is inadequate for this expense.

"Can the Court of County Revenue negotiate temporary loans under Section 17 of the Budget Act for the completion of the courthouse improvement "project mentioned above."

In order for you to be able to make the improvements, you must either pay for the same out of your current revenues or you must be able to create an indebtedness by borrowing money to take care of the same.

As to the first, I gather it is taking all of your current revenue to pay current expenses, that is, your involuntary expenses, fixed expenses.

As to your second proposition, you say you are now at your constitutional debt limit. The above being true, you cannot take advantage of Section 17 of an Act approved Sept. 9, 1935, (General Acts 1935, p. 803) which is as follows:

"Section 17. EMERGENCIES. In the event any situation over which the Board of Revenue, County Commissioner or other like governing body has no control results in an appreciable obligation against the county over and above what said Board has reason to anticipate, and for which no moneys from the current year's income are available to pay, such board may issue its interest bearing warrants as now authorized by law, in an amount sufficient to pay such emergency obligation. And the interest and maturities or principal of such loans shall constitute a part of the budget for the year in which they mature. But before such warrants shall be authorized or sold under this Section, such Board shall inquire into and find that such emergency obligation has accrued, and such finding spread upon the minutes of its proceedings."

I note you say your "County is bonded to the Constitutional debt limit." This being true, you cannot incur further indebtedness and borrow money. I call your attention to the case of Brown, Treas. vs. Gay-Padgett Hardware Co. 188 Ala. 423. Here the Court speaking through Justice Somerville, says:

"As a result of the foregoing considerations, we hold that a county which is indebted up to the constitutional limit may nevertheless appropriate its anticipated revenues actually assessed for the payment of its ordinary current obligations incurred during and for the year "for which such revenues are assessed and payable; that the obligations absolutely fixed by law are preferred claims; that all voluntary obligations assumed or incurred after the exhaustion of the full amount of revenue on hand or in valid expectancy, are debts which are repugnant to the Constitution and are therefore invalid as to their payment."

Biennial Report Attorney General 1930-32 p. 765.

I also call your attention to the cases of Gunter et al v. Hackworth, et al. 182 Ala. 205 (62 So. 107). Biennial Report 1928-30 p. 618.

Sou. Ry. Co. v. Jackson Co. 189 Ala. 436, (66 So. 570)

Therefore, I am of the opinion that under Section 17, supra of the Act of 1935 quoted above, your Board of Revenue is without authority to negotiate a temporary loan, such as you contemplate.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936

Hon. J. Lee Smith,
Judge of Probate, Chilton County,
Clanton, Alabama.

Statutes—

Act No. 2, (Local Acts 1936) which is a Local Act for Chilton County, is unconstitutional and void, being violative of Section 96 of the Constitution of 1901 and of Subsection 24 of Section 104 of the Constitution of 1901.

Opinion by Assistant Attorney General Garrett.

Dear Sir:

I have your letter of June 13, 1936, which is as follows:

"There is herewith enclosed a copy of the Local Bill passed for Chilton County at the 1936 Extraordinary Session of the Legislature.

"Will you please advise me whether or not said Act is constitutional in the light of Section 96 of the Constitution of 1901 and the case of Carnley, Judge v. Moore, 218 Ala. 274, 118 So. 409. Also see Opinion Attorney General, January 1, March 31, 1936, page 70. It seems clear that said Act is unconstitutional under said rulings, however, I would like to have an official opinion on this question."

In reply I wish to advise that the Act referred to in your letter, which is Act. No. 2, Local Acts 1936, is unconstitutional and void.

The said Act is violative of Section 96 of the Constitution of 1901 which reads as follows:

"The legislature shall not enact any law not applicable to all the counties in the State, regulating cost and charges of courts, or fees, commissions or allowances of public officers."

See cases of **Carnley v. Moore,** 218 Ala. 274, at p. 276, and opinion of this office addressed to Hon. Winston Stewart, Judge of Probate, Coosa County, Rockford, Ala., under date of January 23, 1936, Quarterly Report Attorney General Jan.-Mar. 1936, p. 70. Also opinion of this office addressed to Hon. Watkins C. Johnston, Chairman, Board of Revenue of Macon County, Tuskegee, Alabama, under date of March 10, 1936, Quarterly Report Attorney General, January-March 1936, at page 295.

The said Act is also violative of subsection 24 of Section 104 of the Constitution of 1901, which reads as follows:

"The legislature shall not pass a special, private or local law in any of the following cases:

Creating, increasing, or decreasing fees, percentages, or allowances of public officers."

See Carnley v. Moore, supra, and opinion of the Attorney General to Watkins C. Johnston, supra.

I arrive at the conclusion that this local Act is violative of Subsection 24 of Section 104, notwithstanding the fact that it only purports to deal with

the salaries of the members of the Court of County Commissioners of Chilton County, who are subsequently to be elected.

I am aware of the fact that the Supreme Court of Alabama in the case of Miller v. Griffith, 171 Ala 337, held that Subsection 24 of Section 104 of the Constitution, refers only to changing the compensation during the term of the officers and that it could not be construed as prohibiting the Legislature from making provisions for such matters as were applicable to officers subsequently appointed or elected. However, the Supreme Court, at a later date, in the case of Dunn v. Dean, 196 Ala. 486, criticised and overruled the former holding of the Court in regard to this section of the Constitution in the Miller case, supra, and stated that the same was laid in error. In accordance with the obvious intention of subsection 24 of Section 104 of the Constitution, and of the holding of the Supreme Court in the case of Dunn v. Dean, supra, I am constrained to hold that subsection 24 of Section 104 of the Constitution applies with equal force to the compensation of officers subsequently appointed, as it does to the compensation of officers during their present term of office.

Therefore, it is my opinion that the said Local Act for Chilton County is violative of both Section 96 of the Constitution of 1901 and of Subsection 24 of Section 104 of the Constitution of 1901.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. Matt A. Boykin,
Judge of Probate, Mobile County,
Mobile, Alabama.

Local Acts—H. B. 260 by Taylor approved April 10, 1936, held valid enactment.

Opinion by Assistant Attorney General Knabe.

Dear Sir:

I have your letter of May 26th, 1936, in which you request my opinion as follows:

"Will you please furnish me with opinion as to the validity of Act of Legislature approved April 10, 1936, House Bill 260-Taylor, authorizing me as Probate Judge to pay out of any fees in my hands $150.00 per month to assistant tax redemption clerk.

"There can be no question as to the necessity for such services, and the fact that we did have very active clerks rendering that particular service.

"The law requests me as Probate Judge to pay such sum to the person described out of the fees received by me, but for my protection, of course, naturally, I want your opinion as to the validity of the Act, which became effective April 10, 1936."

I have carefully checked the passages of H. B. 260-Taylor in the Journal of each House and find that such passage was regular in every respect. I am of the opinion that this is a valid enactment of the Legislature.

I call your attention to the fact that the money appropriated is payable only to the date of approval of the Act in case services are rendered to that date.

Of course, the Act must be executed in regard to the general laws and under the provisions of the Constitution, as, for instance, it would not be proper to pay this amount of money to an official whose salary would thus be increased by such payment.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. W. L. Pratt,
Judge of Probate,
Bibb County,
Centerville, Alabama.

Schedule 36.2 of the Revenue Bill of 1935—Coal dealers, etc., not entitled to license issued for less than one year.

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 21, 1936, in which you request my opinion as follows:

"Heretofore in issuing business license after the 1st of April I have issued half year license, but under Schedule 36.2 regarding privilege license for persons engaged in selling, distributing, hauling and delivering coal, I find the following words 'and in no event shall this license be issued for less than one year.' Please advise if license issued after the first of April must be for a full year, or if the party applying is entitled to a half year license."

In my opinion, if license is issued to persons engaged in the selling, distributing, hauling and delivering coal and etc., after April 1st, such license must be for a full year; the party applying is not entitled to a half year license. Schedule 36.2 of the Revenue Bill of 1935, provides in part as follows:

"Schedule 36.2. Each person, other than those qualifying under Section 1 of this Schedule, engaged in selling, distributing, or hauling or delivering coal or coke by truck or other vehicle, whether as dealer, employee, agent, broker, sales agent or mining company who sells, or hauls or delivers direct from mine or plant to consumer shall pay a privilege license on the first truck or other vehicle used in said business of fifteen dollars ($15.00), and on each additional truck or vehicle $3.00, but the provisions of this schedule shall not apply to persons whose inventory and sales are in quantities of not more than **one ton, and in no event shall this license be issued for less than one year**, such license to be in addition to the regular motor vehicle license.***"

While it is true that the general provisions contained in the Revenue Bill authorize the issuance of a half year license in some instances, nevertheless, where general terms or exceptions in one part of the statute are inconsistent with more specific or particular provisions in another part, the parti-

cular provisions must govern and should be regarded as an exception to the general provision so that both may be given effect. 59 C. J. 1,000 n. 69,72.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. J. H. Green,
Clerk, Circuit Court,
Decatur, Alabama.

National banks held to be agencies of the Federal Government.

1. Exempt from trial tax in Alabama.

Opinion by Assistant Attorney General Small.

Dear Sir:

You request my opinion as follows:

"Will you please give me your official opinion as to whether or not the Receiver of an insolvent National Bank is chargeable with the $3.00 trial or revenue tax? I have several cases where the Receiver has gotten judgments, and the execution issued against the defendants, and the same returned by the Sheriff "No property found". I have presented the Receiver with bills of costs, and he writes me that the State trial tax is not allowable. I am sending you herewith a letter received from such Receiver, and will ask that you return this letter with your report."

In reply, I wish to advise that in my opinion, the answer to your question must depend, first, upon the question of whether or not a National Bank is, for taxing purposes, an agency of the Federal Government and, secondly, whether or not trial tax in Alabama is a revenue raising measure.

Courts have held that a National Bank is such an agency of the Federal Government. See 3 R. C. L. 287 and authorities cited in Note 1 thereof.

This places a National Bank, for taxing purposes, in the same classification as the Federal Reserve Bank. This office has repeatedly held that Federal Reserve Banks are not subject to trial tax or a tax of this character, for the reason that the tax is a revenue raising measure. I wish to refer you to Biennial Reports of the Opinions of the Attorney General for the period 1930-1932, page 703 and to the authorities cited therein. See, also, Section 531 U. S. Code Ann., p. 363.

Premises considered, it is my opinion that a Receiver of a National Bank cannot be legally required to pay this tax.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. Gaston Scott, President,
Highway Commission,
Montgomery, Alabama.

Vehicle supported on four wheels, drawn by private automobile and designed as boat-trailer, house trailer or used for the purpose of hauling

farm produce held not "trailer" so as to be prohibited from use on highways, by Section 3 of Act No. 58 (General Acts 1932 Special Session p. 62).

Opinion by Assistant Attorney General Loeb.

Dear Sir:

I have your letter of May 11, 1936 in which you request my opinion as follows:

"Please refer to Act No. 58, House Bill No. 112 approved October 6, 1932.

"Under Section 2 of this Act 'Definitions' I find: 'Trailer' means any vehicle designated to be drawn by a motor-truck or truck tractor, but supported wholly upon its own wheels and intended for the carriage of freight or merchandise and with a load capacity of over 1000 pounds.

"Section 3 of the same Act reads as follows: 'No person shall operate any trailer on any highway.'

"Will you please advise me if a vehicle designed as a house-trailer, boat-trailer or for the purpose of hauling farm produce, etc. and supported on four wheels and drawn by a private automobile would be classed as a 'Trailer' under Section 2 and prohibited from use on the highways set out in Section 3 of this Act."

In my opinion a vehicle designed as a house-trailer, boat-trailer or one designed for the purpose of hauling farm produce on four wheels, etc. and drawn by a private automobile would not be classed as a trailer under Section 2 and prohibited from use on the highways within Section 3 of Act 58 (General Acts of 1932, Special Session p. 68).

The term "trailer" as defined by Section 2 of said Act, means "any vehicle **designed to be drawn by a motor-truck or truck-tractor**, but supported wholly upon its own wheels and **intended for the carriage of freight or merchandise** and with a load capacity of over 1000 pounds." (Emphasis supplied)

Certainly a vehicle designed as a house-trailer, or boat-trailer cannot come within the foregoing definition, inasmuch as such vehicle is clearly not "intended for the carriage of freight or merchandise" within the meaning of the foregoing definition of a "trailer".

A vehicle designed for the purpose of hauling farm produce, supported and drawn by a private automobile, though intended for the carriage of freight or merchandise within the meaning of the foregoing definition nevertheless is not in my opinion such a "trailer" as would be prohibited from travelling on the highway, by Section 3 of Act No. 58, supra.

Schedule 158.11 of Revenue Bill of 1935 attempts to legalize the use of such trailers on the Highways of the State. This schedule provides in part as follows:

"All trailers of any kind and description used by persons exclusively for the handling of farm products raised by said farmers are exempted from the paying of said license on said trailers."

Furthermore, in my opinion, in order for a vehicle to come within the definition of a "trailer" it must be drawn by a "motor-truck" or "truck-

tractor". A "motor-truck" is defined by Section 2 of Act No. 58 as "any motor-propelled vehicle designed for carrying freight or merchandise and not operated or driven on fixed rails or tracks." This definition goes further and says that the term "motor-truck" shall not include self-propelled vehicles "designed primarily for passenger transportation."

It would seem clear, therefore, that a vehicle, supported on four wheels and designed to be drawn by a vehicle other than a "motor-truck or truck-tractor" would not be a "trailer" so as to come within the provision of Section 3 of Act No. 58.

Premises considered, therefore, I am of the opinion that the house-trailer, boat trailer or other trailer supported on four wheels and used for the purpose of hauling farm products may legally be operated on the highways of the State of Alabama, where such vehicles are drawn by private automobiles.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. John Dale Bonner,
Chairman, Board of Registrars,
Wilcox County,
Camden, Alabama.

Board of Registrars of Wilcox County—When the Board must and may meet.

Opinion by Assistant Attorney General Kohn.

Dear Sir:

I wish to acknowledge receipt of your letter of May 1, 1936, in which you state:

"On April 21, 1936, the Governor approved House Bill No. 171 relative to the times of meeting of Boards of Registrars. After reading this Act carefully, I am still in doubt as to when the Board should meet in Wilcox County.

"Therefore, I am writing to ask that you be kind enough to give us an official ruling as to when the Board of Registrars should meet in Wilcox County.

"Will you kindly advise when the Board **must** meet, and when it **may** meet, if called or authorized by the Court of County Commissioners? What I want is to know all of the meetings that must or may be had."

In reply, it is my opinion that the Board of Registrars of Wilcox County must meet:

Between October 1st and December 31, 1927, and each two years thereafter, to make a complete registration of all persons entitled to register. Time consumed by the Board in completing said registration shall not exceed thirty working days. (Section 375 of Act No. 289, S. 179, approved August 20, 1927, General Acts of 1927, p. 274).

On the fourth Monday in January, 1928, and each two years thereafter and remain in session ten working days for the purpose of registering voters. (See Act No. 289, supra).

On the first Monday in January, 1936, and each two years thereafter for the purpose of purging the list, and continue in session one week. One week is composed of six working days and Sunday.—See Quarterly Report of the Attorney General, Vol. II, p. 44. (Section 1 of Act No. 460, H. 926, approved September 13, 1935, General Acts 1935, p. 969).

On the second Monday in February, 1928, and each two years thereafter, and remain in session one day for the purpose of striking names from the registration list. (Section 393 of Act No. 289, S. 179, approved August 20, 1927, General Acts 1927, p. 276).

On the first Monday in July, 1936, and each year thereafter, and remain in session for five days for the purpose of registering voters. (Section 1 of Act No. 155 H. 171, approved April 21, 1936, General Acts of 1935, Extra Session.)

In my opinion the Board of Registrars of Wilcox County may meet when ordered by the court of county commissioners, board of revenue, county commissioners, or other court of like jurisdiction, for ten working days during the month of January, 1921, and each two years thereafter, for the purpose of registering voters. (Section 1 of Act No. 155, supra).

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. George O. Miller,
Representative, Sumter County,
Livingston, Alabama.

Privilege tax for recording mortgages is based on the principal sum secured.

Opinion by Assistant Attorney General Moore.

Dear Sir:

I have your letter in which you state:

"Will you please give me an opinion as to the amount of mortgage tax due on a mortgage with the following provision in same:

" 'THAT WHEREAS, the said party of the first part has borrowed from the party of the second part the sum of FIFTEEN HUNDRED & NO/100 ($1500.00) DOLLARS, which said sum, together with the interest thereon is evidenced by the promissory waive note of said party of the first part for the sum of SIXTEEN HUNDRED TWENTY & NO/100 ($1620.00) DOLLARS, payable to the party of the second part, of even date herewith, with interest from maturity, and due and payable on the 25th day of March, 1937.

" 'NOW, THEREFORE, in order to secure the prompt payment of said note, the said party of the first part does hereby grant, bargain, sell and convey, and by these presents has granted, bargained, sold and con-

veyed unto the said party of the second part the following described real estate, etc.'

"In other words, I would like to have an opinion as to whether the mortgage tax is due on the amount of the loan, namely $1500.00, or the amount of the loan and interest, $1620.00?"

It is my opinion that the privilege tax should be computed on the principal sum secured, in your case $1500.00.

Office Edition, Book 2-A, page 31.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936.

Hon. William D. Peeler, Register,
Circuit Court in Equity, Lauderdale County,
Florence, Alabama.

Costs growing out of the sale of land for partition or division, is the first money paid out of the proceeds of the sale.

Attorney's fee, strictly speaking is no part of the costs of court.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of April 20, 1936, in which you request my opinion as follows:

"There has been a decree of sale and also the decree of conformation rendered by this Court, in a cause in this Court, and the property did not bring enough to cover all cost in this case.

"Please advise me which cost or fees should have prior claims against the proceeds of this sale. Should the proceeds be prorated, or in otherwords, should the attorney's fee have equal claim against the proceeds of the sale as other fees on prorate basis?"

Where there is petition filed in Court for the partition or sale of lands for division, said sale is had under formal decree of the Court, the property fails to bring sufficient amount to pay all the costs, I gather from your request you desire the following information:

First: Is the cost a preferred claim and should it be paid in preference to all other claims?

Second. Is the attorney's fee a part of such costs so as to participate in the funds obtained as purchase price of said property?

It is my opinion the cost of court growing out of the proceeding seeking to obtain sale of property for partition or division should be paid first and then whatever balance, if any, be distributed among the joint owners.

C. J. 15, Section 207, p. 103.

Section 9327, Code of Alabama, 1923, is as follows:

"9327. Payment and distribution of the purchase money.—Such commissioner may discharge himself from all liability for money received by him for the property sold, by paying over the same to the Judge of Probate, after deducting therefrom the costs and expenses attending the sale, including commissions to him at the same rate that executors or administrators receive for collecting, but in no case more than one hundred dollars; and such net proceeds must be distributed by the judge of Probate among the persons entitled thereto, according to their respective interests."

The taxation of costs is purely statuatory and the statute must be followed strictly. At common law, no costs could be recovered.

Brewer v. State, 59 Ala. 130,
Henry v. Murphy, 54 Ala. 246.

As to attorney's fee, strictly speaking, such fees are not a part of the costs. Of course the attorney has a lien on any judgment he may obtain for his client for the amount of his fee, but this is a matter between his client and himself.

In this connection I call your attention to Section 9319, Code of Alabama, 1923, which is as follows:

"In all cases of the partition or sale of property for division of proceeds, the court may, in its discretion, allow a reasonable solicitor's fee to the solicitors of the parties, to be taxed as a common charge on all the interests, and to be paid out of the proceeds in case of a sale, when the services are for a common benefit of all, and to be a lien on the several parts in case of partition."

The above quoted section comes under partition in the Code and deals with attorney's fees arising under sales of property for division or partition, and, in my opinion, should govern in cases of this character.

In this connection, I might call your attention to Section 6261, Code of Alabama, 1923. It is true this Section says attorney's fee, and when proven, becomes a part of the costs. This is true, but I do not think this means a part of the court costs, but an item of cost incidentally growing out of the proceeding, and cannot, I do not think, be placed on a parity with Court costs.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 26, 1936

Hon. P. O. Davis,
Executive Secretary,
Alabama Polytechnic Institute,
Auburn, Alabama.

WAPI Radio Station—Under lease agreement between Board of Control of Radio Broadcasting Station WAPI and WAPI Broadcasting Corporation the latter is liable for expenditures incurred in pursuance of federal regulation for protection of aviation.

Opinion by Assistant Attorney General Screws.

Dear Sir:

Your letter of April 10, 1936, addressed to Governor Bibb Graves, has been referred to this office for attention. Said letter reads in part as follows:

"At the meeting of the WAPI committee with you yesterday, April 9, Doctor Denny raised a question about payment of a bill presented by the WAPI Broadcasting Corporation, amounting to $518.23, for labor and material in lighting towers of Radio Station WAPI near Birmingham. It was agreed by the Committee that you would ask the Attorney General to advise us whether or not, in his opinion, under our lease agreement with the WAPI Broadcasting Corporation, the owners of Station WAPI should pay this part.

"The WAPI Broadcasting Corporation contends that this expense was incurred by a federal regulation (copy of which is attached) requiring that radio station towers be lighted for protection to aviation and that this is separate and apart from broadcasting.

"Members of our committee contend that under the lease agreement (copy of which is attached) the owners were explicitly exempt from all costs of every kind. Please see Sections 5, 7, and 15."

After a careful reading of the lease and the federal regulation in question, I am of the opinion that there is no liability on the Board of Control of Radio Broadcasting Station WAPI for the payments under consideration. Such liability, in my opinion, is on the WAPI Broadcasting Corporation.

Under the lease in question the Board of Control of Radio Station WAPI is the party of the first part, and the WAPI Radio Broadcasting Corporation is the party of the second part. The pertinent parts of the lease which have a bearing on the question involved are as follows:

"3. The Party of the Second Part shall also be entitled to the benefit, enjoyment, revenues, rights, privileges and immunities under any contracts, franchises, licenses or agreements now in force in regard to said Station from and after said August 1, 1932, for and as long as the lease shall remain in force and effect, and shall assume and agree to perform all of the obligations imposed thereby from and after said date, during the continuance of this lease, and the Parties of the First Part agree to execute any assignments, or other instruments, that may be deemed necessary in order to secure to the Party of the Second Part the full enjoyment of said rights, revenues, privileges, franchises, and immunities and to secure from WAPI Broadcasting Company, which has been and is now operating said Station, similar assignments.

"5. The Party of the Second Part during the term of this lease shall pay all costs and expenses incident to the operation of said Station and shall keep all equipment incident thereto in repair, natural wear and tear and obsolescence expected. During the time of this lease the Parties of the First Part shall not be required to make any repairs, additions, replacements, or improvements to said Station or any equipment thereof.

"7. At the expiration of this lease by termination or forfeiture the Party of the Second Part shall deliver to the Parties of the First Part the Station and all equipment used in connection therewith, which said

equipment shall be kept at least adequate at all times for proper operation of a 5 KW Station. To this end, and as a general guarantee on the part of the Party of the Second Part of its performance of all the obligations assumed by it herein, Party of the Second Part agrees to hold and maintain unencumbered and inviolate at least its present subscribed capital stock of $25,000, of which $10,000 has already been paid in cash.

"15. In the event the Party of the Second Part or assigns shall fail, within ninety days after written demand from the Parties of the First Part, or the owners of said Station, to comply with any of the provisions of this contract the Parties of the First Part or the owners of said Station may terminate this contract, and all rights of the Party of the Second Part or assigns to continue to operate or control said Station, shall cause, terminate and be forfeited and the possession thereof surrendered promptly to the Parties of the First Part. The Parties of the First Part shall not assume or become liable for any of the obligations of the Party of the Second Part."

It will be seen from the above that no liability is imposed upon the Party of the first part (the Board of Control of Radio Broadcasting Station WAPI) for any expenditures after the beginning of and during the term of the lease.

In my opinion, the regulation imposed by the Federal Government is incidental to the operation and maintenance of the Broadcasting Station, although primarily for the protection of aviation. Any expenditure in connection therewith should be borne by the party of the second part (the WAPI Broadcasting Corporation.)

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 27, 1936

Hon. John B. Sockwell,
Sheriff, Colbert County,
Tuscumbia, Alabama.

Where, on account of the jail being insecure in a county, a special guard has to be employed, the county where the jail is located is chargeable with this expense.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of May 26, 1936, in which you request my opinion as follows:

"I have been notified by the United States Prison Inspector that the County Jail of Colbert County is insecure and insufficient and I have reasons to apprehend that the prisoners will attempt to escape. I have a night guard employed to watch the Jail, and the County pays for his services. Would I be authorized under section 4813 Code of Alabama, 1923, to summons a guard for day duty at the Jail? Would the Probate Judge be authorized upon the approval of the County Commissioners to draw a warrant to compensate a day guard for the prisoners at the jail?"

Under an opinion of this office written February 13, 1931, this office held that a sheriff had the right to employ such guard, Biennial Report of Attorney General 1930-1932, p. 100, copy of which opinion I am herewith enclosing. Therefore, it is my opinion if the sherfif has a right to employ such guard, it naturally follows that it would be the duty of the County to pay such expenses.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 27, 1936.

Hon. E. W. Stewart,
Sheriff, DeKalb County,
Fort Payne, Alabama.

Under Local Act, H. B. 151-Tolbert, Governor's Number 34, approved Mar. 24, 1936, it becomes the duty of the officer charged with such duty to issue warrant for the payment of deputy sheriff specifically provided for by the Act, supra, when the same has been audited and allowed by the Board of Revenue of DeKalb County.

Opinion by Assistant Attorney General Haynes.

Dear Sir:

I have your letter of June 16, 1936, in which you request my opinion as follows:

"In the last session of the legislature a bill was passed for DeKalb County as follows: Allowing DeKalb an additional Deputy Sheriff to be paid out of the county funds not more than $100.00 per month, and was approved by the Governor on March 24, 1936, also it was approved by the Board of County Commissioners. The Judge of Probate has refused to issue warrant against the county funds for service of the deputy.

"Please give me your opinion as to whether or not the Judge of Probate should issue warrant for service of the Deputy."

In answering your request, I call your attention to an Act, H. B. 151-Tolbert, Governor's No. 34, approved March 24, 1936, and especially do I call your attention to Section 1 of said Act, which fixes the salary of such Deputy Sheriff, and is as follows:

"That the Sheriff of DeKalb County is hereby allowed an additional deputy to the deputies now provided by law, which said deputy shall receive a salary of Twelve Hundred Dollars ($1200.00) per annum, to be paid in twelve equal monthly installments out of the General Funds of said County; that said deputy sheriff shall be eligible to perform the duties of deputy sheriff anywhere in said county."

Again, I call your attention to Section 2 of said Act, supra, which describes the method of payment of the salary of such deputy sheriff and is as follows:

"That on the first day of each month a statement of the name and amount due said deputy sheriff shall be furnished to the Board of Revenue by the sheriff and shall thereupon be the duty of the said County to order a warrant drawn upon the General Funds of the County payable to

said deputy sheriff for the amount of one month's salary as hereinabove provided."

From the above, it is my opinion, when such claim has been properly presented and passed by the Board of Revenue of DeKalb County, that the officers charged with the duty of issuing such warrant should do so. I am not passing on the validity of this Act, that is as to its constitutionality, as the question is not here asked, but the Act on its face, seems valid.

See Opinions of the Attorney General Quarterly Report Oct.-Dec. 1935, p. 3, to Hon. J. Percy Oliver, Judge of Probate of Tallapoosa County, Alabama, Dadeville.

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

June 27, 1936.

Board of Revenue,
Montgomery County,
Montgomery, Alabama.

Attention J. W. Heustess.

Statutes—Acts 1931, page 64 providing salary and allowances to Sheriffs of Counties of population from seventy-five thousand to one hundred thousand not abrogated by the 24th (Sparks) amendment to the Constitution.

Opinion by Assistant Attorney General Rowe.

Gentlemen:

Receipt is acknowledged of your request for opinion as follows:

"Please advise me whether or not the Sparks Constitutional Amendment, Acts 1933 at pages 46-48, repealed the Act of the Legislature approved February 20, 1931, providing for the expenses of running the office of Sheriff in Montgomery County, Alabama, which has, according to the Federal census of 1930, a population of seventy-five thousand people and less than one hundred thousand people."

In my opinion, the provisions of Acts 1931, page 64 fixing the salary and allowances for expenses etc. to Sheriffs of Counties having population between seventy-five thousand and one hundred thousand are not abrogated or affected by the 24th (Sparks) amendment to the Constitution.

The 1931 Act, supra, is effective in Montgomery County by reason of its population classification, and by reason of the Constitutional amendment authorizing the Legislature from time to time, by local or general law, to fix, regulate and alter the amount of the salaries and allowances of officers of said County, including the Sheriff (Constitution, 4th amendment).

The Acts of 1931, supra, provides:

"Section 1. That in all counties in this State, which now have, or which may hereafter have a population of 75,000 people and less than 100,000 people according to the last Federal census, or any such census which may hereafter be taken where such sheriffs are constitutionally paid upon a salary basis, shall receive and be paid an annual salary of

four thousand dollars net, in lieu of all other compensations, fees and emoluments except as otherwise provided in this Act and said sheriffs shall be allowed the sum of Twenty-five thousand Two Hundred Dollars ($25,200.00) per annum for help and assistance as follows: one deputy at twenty-four hundred dollars per annum, Ten deputies at eighteen hundred dollars per annum, Twelve hundred dollars per annum for an attorney; and one guard for the county jail in said counties at Twenty-one hundred dollars per annum, one guard for the county jail in said counties at Fifteen hundred dollars per annum, and in addition to the above allowance the sheriffs of such counties shall be allowed from the passage and approval of this Act the further sum of Two Thousand five hundred dollars per annum for other expenses and ex-officio services of said sheriff and for his personal attendance upon each session of the Juvenile Court or court of like jurisdiction in such counties, which attendance is hereby made obligatory upon said sheriff. The said Two Thousand five hundred dollars to be paid to the said sheriffs in equal monthly installments, out of the general fund of said counties, the selection and appointment of said deputies, guards and attorney shall be made by said sheriffs of said counties. That sheriffs of such counties shall not be allowed any additional sum for deputies, other than herein provided in this Act.

"Section 4. That all compensation and salaries of said sheriffs mentioned in Section One of this Act and all allowances for deputies and other assistance shall be paid out of the general fund of the several counties effected in monthly installments.

"Section 5. That all of said sheriffs shall pay into the County treasury of said counties, all costs, charges of courts, fees and commissions authorized by law, or which may hereafter be authorized by law to be collected by said sheriffs as other money belonging to said counties are paid. The courts of county commissioners, Boards of Revenue and other courts of like jurisdiction shall have the power and authority, and it shall be their duty to audit the accounts of said sheriffs for the purpose of requiring a strict compliance with the provisions of this Act."

Thus, in addition to the **salary** of the Sheriff, definite provisions are therein made for the expenses of the operation of the office of the Sheriff, and for the payment of all of the receipts of the Sheriff's office from fees, costs, etc, into the County Treasury.

The so called Sparks amendment (Constitution, amendment 24) is not self executing. See Houston County v. Martin (4th Division 869), a decision of the Supreme Court of Alabama which is now in MS. In order for it to be effective to limit or curtail the then existing provision of law relative to the salary, allowances, etc, of the Sheriff of Montgomery County, it would have been necessary for the Legislature to have enacted additional legislation upon the subject. No enactment of the Legislature has specifically provided, since the adoption of the so called Sparks amendment, for salary, expenses, etc, of the Sheriff of Montgomery County. It is, therefore, my conclusion that, in the absence of subsequent legislation dealing specially with the subject, the prior legislation (Acts 1931, page 64) is still effective.

In speaking to the subject, the Supreme Court in the Martin case, supra, said:

"Said proviso was written into said amendment primarily as a limitation on the power of the legislature to fix any salary above the specified

amount while said amendment continued in force. The legislature was not specially concerned with compensation of officers who received fees paid by private individuals for official services. If future legislation had not been contemplated, some provision, no doubt, would have been made in the amendment itself for office assistants, clerks, and for such officers as judges of probate, and disposing of the surplus by requiring it to be paid either into the State or county treasury.

"The language which immediately follows said proviso, 'Any Act of the Legislature heretofore adopted decreasing or diminishing the salary, fees or compensation of any such officer or officers, and which by its terms is to become effective after the expiration of the present term of any such officer or officers, shall, by virtue hereof, become effective from and after the first day of the month next succeeding the date of the ratification and adoption of this amendment; **Provided, however, that should the Legislature adopt any other Act or Acts decreasing or diminishing the salary, fees or compensation of any such officer or officers during the term for which such officer or officers may have been elected or appointed in a larger amount, such subsequent Act or Acts shall control. Any other Act of the Legislature adopted prior to October 1, 1935, decreasing or diminishing the salary, fees or compensation of any such officer or officers, during the term for which such officer or officers may have been elected or appointed, shall be effective from and after the first day of the month next succeeding the date of the ratification and adoption of this amendment, or from and after the adoption by the Legislature of any such Act decreasing or diminishing the salary, fees or compensation of such officer or officers,** is conclusive that further legislation was contemplated, and if such further legislation was enacted before the adoption of the amendment, it should be effective 'from and after the first day of the month next succeeding the date of the ratification and adoption of the amendment.' If it was enacted subsequent to the adoption of the amendment, 'from and after the adoption by the Legislature of any such Act.' —(Italics supplied)—Acts Extra Session 1933, page 47 . . . . . "

"Moreover, the provisions of the Hendley Act, like those of the amendment which do not fix a definite standard as to office expenses, clerk hire, etc, are too indefinite to be applied by the courts to officers who are compensated by fees, and required by law to pay for their own assistance.—Code, Sec. 9591, Subsection 6; **United States v. L. Cohen Grocery Company,** 255 U. S. 81."

Yours very truly,
A. A. CARMICHAEL,
Attorney General.

INDEX

"A"

ACTS: (General and Local)
General Acts of 1909:
Page 338 147

General Acts of 1927:
Page 276 78
Page 606 22
Page 696 104

General Acts of 1931:
Page 11, Section 28 35
Page 61 44
Page 687 20

General Acts of 1932:
Page 62, Section 3 213
Page 69 135
Page 178 ..... 27, 30, 162

General Acts of 1933:
Page 81 11
Page 124 31

General Acts of 1935:
Page 219, Section 23 53
Page 229 163
Page 595 139
Page 616 38
Page 629 68
Page 632 11
Page 791 106
Page 792 139
Page 803, Sections 11, 17 ..... 42, 97
Page 911 43
Page 981 197
Page 1092, Section 3 88

General Acts of 1936:
No. 51, H. 61 50
No. 122, H. 103 61
No. 155, H. 171 ..... 180, 197
No. 167, S. 64 168
No. 190, H. 106 130
No. 194, S. 125, Section 4 (d) 190
No. 199, H. 125 135

Local Acts of 1927:
Page 109 18

Local Acts of 1931:
Page 193 101

Local Acts of 1935:
Page 189 16

INDEX—Continued

Local Acts of 1936:
No. 2, H. 2 210
No. 3, H. 3 64
No. 24, S. 30 116
No. 34, H. 151 ..... 181, 221
No. 65, S. 97 112
No. 88, H. 293 139
No. 103, H. 260 211
No. 110, S. 16 80
No. 120, S. 168 127

ALABAMA METHODIST ORPHANAGE:
Taxation—exemption of property from 155

ALABAMA OYSTER COMMISSION:
Expense allowance of Chairman 11

APPEALS:
Bastardy proceedings—security for costs 64
Costs—hard labor cases 205
Costs—payable from fine and forfeiture fund 145
Costs—payment by Convict Department where defendant dies pending appeal 125
Habeas Corpus—fees of clerk for preparing transcript 115
Habeas corpus proceedings 61

APPROPRIATIONS:
County may transfer funds to Public Welfare Department 97
Schools—re-appropriation of funds for repair of buildings 170

ASSESSMENTS:
Correction—time and method of 203
No penalty for reassessment 202
No penalty for three-fourths year taxes 8
Proper to name holder of legal title 202
Property bought by city at tax sale 134
(See Boards of Review, Property, Taxation)

ATTORNEYS AT LAW:
Fee—not part of costs 217

AUTAUGA COUNTY:
Civil and Criminal Court—not Court of Record—qualifications of special judge 15
School buildings—re-appropriation of funds for repair of 170

AUTOMOBILE DEALERS:
Licenses—Repairing and selling batteries 184

AUTOMOBILES:
(See Highways and Highway Department—Motor Vehicles)

"B"

BAIL:
Habeas Corpus—release of prisoner on appeal from order granting 61

INDEX—Continued

BAILIFFS:
Appointment—Responsibility to sheriff....168

BALLOTS:
Pay of managers and clerks for counting absentee....113

BANKS AND BANKING:
Excise tax on financial institutions....9
National Banks exempt from trial tax....213

BARBOUR COUNTY:
Loans from sinking fund for current expenses....172

BASTARDY:
Security for costs—bond held not to secure costs on appeal....64
Sheriffs' fees for feeding prisoners charged with....95

BATTERIES:
Licenses—automobile dealers repairing and selling....184

BOARD OF DENTAL EXAMINERS:
Members held State officers—term—liability....186

BOARD OF REGISTRARS:
Duty with respect to transfer of voter's name....195
Mobile County—time of session—notice to voters....197
Probate Judge may not reinstate voter stricken from list by Board....78
Wilcox County—time of meeting....215

BOARDS OF REVENUE:
(See Courts of County Commissioners, Counties)

BOARDS OF REVIEW:
Assessments—notice unnecessary where not raised....28
Members—mileage for attending sessions....171
(See Property, Taxation)

BONDS:
Bastardy cases—held not to secure costs on appeal....64
Counties—not liable for expenses of county treasurer in certain instances....66
Retirement at premium....117
Sureties—detinue bond, liability....137

BRIDGES:
(See Highways and Highway Department)

BUDGET ACT:
Constitutional debt limit of county discussed....208
Counties—temporary loans—emergencies....42
County commissioners may reappropriate funds to Public Welfare Department for support of poor....97
DeKalb County—effect of Act allowing additional deputy....185

"C"

CANDIDATES:
Declaration of candidacy—time for....178

INDEX—Continued

CHAIN STORES:
Licenses—merchandise sent on consignment 183
Licenses—public warehouse—liable for 183

CHILTON COUNTY:
House Bill No. 3, Local Acts 1936, constitutional 64
Local Act 1936, No. 2, unconstitutional 210
Local Act relating to Agricultural Fund constitutional 116
Road supervisor—Act creating office not effective until appointment and qualification of 84

CITIES:
(See Municipalities)

CITY BOARD OF EDUCATION:
City treasurer not entitled to salary for handling school funds 26

CLARKE-WASHINGTON ELECTRIC MEMBERSHIP CORPORATION:
Regulation of by Alabama Public Service Commission 163

CLAY COUNTY:
Commissioners Court—compensation 16

CLERKS:
Inferior Courts—issuance of execution 35

CLERKS OF CIRCUIT COURT:
Costs—issuance of execution for 181
Deputy may not accept claims in payment of fine—money only 193
Duty to issue execution for unpaid costs 205
Habeas Corpus—fees for preparing transcript on appeal 115

COAL DEALERS:
Licenses—none for half year 212

CODE OF 1923:
Section 215 129
Section 393 197
Section 402 ..... 62, 109
Section 1397(49) 124
Section 1397(87)d 149
Section 3111 74
Sections 3427, 3439 64
Section 3668 181
Section 3741 95
Section 4038 193
Section 4492 95
Section 4654 59
Section 4768 59
Section 4910 205
Section 5571 95
Section 6793 147
Section 7285 24
Section 7805 91
Section 9023 24

COFFEE COUNTY:
Act relieving tax collector, constitutional 101

INDEX—Continued

COMMISSIONERS COURT:
(See Court of County Commissioners, Counties)

CONECUH COUNTY:
Solicitor's fees ... 18

CONSTITUTION OF 1901:
Section 45 ... 106

CONSTITUTIONALITY:
Act of 1933, p. 67, defining public and private waters valid ... 69
Act 1935, p. 791, regulating qualifications of newspaper as media of legal advertising ... 106
Chilton County—Local Act creating road supervisor valid ... 64
Chilton County—Local Act relating to Agricultural Fund constitutional ... 116
Local Act increasing expense allowance for circuit judge unconstitutional ... 80
Local Act 1936, No. 2, Chilton County, unconstitutional ... 210
Local Act 1936, No. 88, Shelby County, valid ... 139
Mobile County—Act authorizing tax redemption clerk—valid ... 211
Old Age Assistance Act—Amendment held constitutional ... 14
Relief Act—tax collector of Coffee County, constitutional ... 101
Section 178 of Revenue Laws of 1935, constitutional ... 118
Sheriff's salary—Acts 1931, p. 64, effective ... 222
(See Statutes)

CONTRACTORS:
Licenses—half year ... 157

CONTRACTS:
Commissioner's contract extending beyond term of office valid if made in good faith ... 26
Construction companies—licenses ... 157
Contractors—penalty for accepting contracts without license ... 39
Filing tax—conditional sale contracts assigned before recordation by National Bank ... 51

CONVICTS:
Convict Department entitled to fines where defendant sentenced to hard labor ... 188
Costs—Convict Department not responsible for on appeal ... 145
Costs—payment by Convict Department where defendant dies before completing sentence and pending appeal ... 125
Costs—payment where item inadvertently omitted ... 181
Costs—when payable by Convict Department ... 41
Paroles—revocation under indeterminate sentence law ... 176

CORPORATIONS:
Foreign—buying and selling real estate in Alabama—taxes ... 194
Taxation—income from contract with United States ... 54

COSTS:
Appealed hard labor cases—how payable ... 205
Attorney's fees not part of ... 217
Bastardy proceedings—security on appeal ... 64

INDEX—Continued

COSTS:—(Continued)

Certification to Convict Department where motion to set aside verdict is pending in circuit court 41
Clerk to issue execution for in penitentiary cases 181
Convict Department—payment where item inadvertently omitted 181
Convict Department—payment where defendant dies before completing sentence and pending appeal 125
County Board of Revenue—no authority to pay in mandamus proceeding against county chairman 85
Detinue suit—liability of surety on bond 137
Execution for value of stolen property on conviction of larceny, etc. 205
Execution for where unpaid by State 205
Execution when judgment is for defendant 91
Fine and Forfeiture Fund—payable from on appeal 145
Fine and Forfeiture Fund—payment where defendant confesses judgment 150
Hard labor cases—payment by State 181
List of insolvents—payment for publication 121
Payment from sale of land for partition 217
(See Fees, Various Officers)

COTTON:
Warehouses—licenses for 159

COUNTIES:
Authorized to pay hospital expenses of employees 44
Barbour County—loans from sinking fund for current expenses 172
Bonds—commissioners court may retire at premium 117
Board of Revenue—Without authority to make appropriations to American Legion Convention 44
Budget Act—does not prevent reappropriation of funds to Public Welfare Department 97
Budget Act—temporary loans—emergencies 42
Commissioners court may appropriate money to Public Welfare Department 97
Constitutional debt limit—authority to borrow money and create debt 203
County treasurer—expenses for making deposits and cutting coupons 66
Courts of county commissioners—may not pay costs in mandamus proceeding against chairman 85
Fines—entitled to for violations of state Milk Control Law 53
Gasoline tax—use of to erect hospital 206
Gasoline tax—use of to pay past incurred indebtedness 50
Jails—employment special guard for 220
Judges of Probate—employment of clerical assistance 62
Liability for care of wounded prisoner 189
List of insolvents—payment for publication of 121
May pay transportation charges of manager of Re-employment Service 116
Mobile County may prescribe scope of minutes 93
Montgomery County—certain officers unauthorized to receive extra compensation 44
Prisoners—fuel and water for 146
Schools—donations to under Acts 1931, p. 687 20

INDEX—Continued

COUNTIES:—(Continued)

Sheriff's salary—effect of Sparks Amendment 222
Solicitor, Franklin County Law and Equity Court—extra compensation 127
Special tax for purchasing lot for jail 129
Tax Collector—compensation where paid on fixed salary basis 70
Treasurer—clerical assistance 147
Warrants—Jackson County—discussed generally 131
(See Courts of County Commissioners)

COUNTY BOARD OF EDUCATION:
Marion County—qualifications of candidate for election 119
Special district three mill tax election called at request of 77
(See Schools)

COUNTY COURT:
Costs—payment where defendant confesses judgment 150
Fees of clerk and sheriff in nol prossed felony cases 128

COUNTY SUPERINTENDENTS OF EDUCATION:
Qualifications under General Acts 1927, p. 606 22

COURTS:
Autauga County—Civil and Criminal Court not one of record 15
Circuit, Probate and County—Sheriff's fees for attendance upon 92
Inferior Court—no fee for sheriff for attending 95
Judges without power to remit fines or grant probation 138
Municipal Court of Limestone County—jurisdiction of 160
Sheriffs' fees—none allowed for waiting on non-jury term 95
Authorized to defray hospital expenses of injured employees 44
Barbour County—loans from sinking fund for current expenses 172
Board of Review—mileage 171
Bonds—retirement of at premium 117
Clay County—compensation 16
Constitutional debt limit of counties discussed 208
Contracts extending beyond term of office valid if made in good faith 26
Gasoline tax—use of to erect hospital 206
Costs—cannot pay in mandamus proceeding against county chairman 85
Jackson County warrants discussed 131
Jails—furnishing fuel and water for 146
May appropriate funds to Public Welfare Department of County 97
May levy special tax for purchasing lot for jail 129
May pay transportation charges of manager of Re-employment Service 116
May reappropriate funds to Public Welfare Department under Budget Act 97
Mobile County—may prescribe by resolution what minutes shall consist of 93
Montgomery County—without authority to make appropriations to American Legion Convention 44
No authority to use road and bridge or gasoline funds to pay toll bridge operator 36
Plat books—contract with third party to prepare 58
(See Counties)

INDEX—Continued

"D"

DEED TAX:
(See Filing Tax)

DEEDS:
Tax sales—effect of quitclaim from purchaser to original owner 74

DeKALB COUNTY:
Budget Act—amended by Act allowing additional deputy 185
Deputy sheriff—payment of 221

DENTISTS:
Restoration of revoked license—use of X-Ray 186

"E"

ELECTIONS:
Absentee ballots—pay of managers and clerks for counting and certifying 113
Board of Registrars, Mobile County—time of session—notice to voters 197
Board of Registrars—time of session 180
Candidate for Marion County Board of Education—qualifications 119
County superintendent of education—qualifications 22
Declaration of candidacy—time of 178
Illegal registration—purging of voters' names 157
Justices of the peace—Grove Hill, Alabama 143
Justice of the Peace—nomination—time of 143
Poll tax—may not be received after February 1st 7
Precinct liner allowed same choice of citizenship as county liner 83
Probate judge not entitled to compensation for preparing list for inspectors 109
Probate Judge entitled to 2½c per name for making lists of qualified voters 109
Probate Judge not authorized to reinstate name stricken from list by Board of Registrars 78
Registration—persons of foreign birth 35
Residence—service in Army and Navy 153
Schools—Method of calling for levying one mill and three mill taxes 77
Special three mill district school tax—collection of 111
Transfer of voter's name to other precinct 195
Voters—temporary removal from one precinct to another 57
(See Poll Tax—Registration—Voters)

EXECUTIONS:
Clerk's duty to issue for unpaid costs 205
Costs—payment of where no property found 145
Issuance of in penitentiary cases 181
Larceny—issued on value of stolen property 205
Liability of securities on detinue bonds 137

EXEMPTIONS:
Insane persons—ad valorem tax—amount 67
Taxation—factories erected prior to 1935 169
Taxation—property of charitable organization 155
Taxation—property owned by Jasper Homesteads, Inc. 136
Trial tax—National Banks 213
(See Licenses, Taxation)

INDEX—Continued

"F"

FEES:
Assessment of goods for part year taxes—no delinquent fee chargeable 8
Attorneys—not part of costs 217
Board of Review—mileage for attending sessions 171
Clerk of circuit court—preparing transcript in habeas corpus appeal 115
County Solicitor—Conecuh County 18
Fine and forfeiture fund—nol prossed felony cases in county court 128
Probate judge and tax collector—law fixing construed 165
Probate Judge—attesting satisfaction of mortgages 24
Probate Judges—changing ownership of automobile tag 158
Sheriffs—attendance upon circuit, probate and county courts 92
Sheriffs—entitled to $3.00 for seizure of liquor regardless of amount 59
Sheriffs—feeding and caring for insane and juvenile prisoners 95
Sheriffs—feeding of prisoners 139
Sheriffs—feeding prisoners in bastardy cases 95
Sheriffs—Juvenile cases—how collected 95
Sheriffs—no pay for waiting on non-jury terms of court 95
Sheriffs—none allowed for attending Inferior Court 95
Sheriffs—serving warrant, bond and summoning witness in non-support cases 95
Sheriffs—summoning special jurors in capital cases 95
Solicitor, Franklin County Law and Equity Court—extra compensation 127
Solicitors—violations of Alabama Motor Carrier Act of 1932 27
Tax assessors—discussed generally 58
Witnesses—sheriffs entitled to per diem and mileage 35
(See Costs, Fine and Forfeiture Fund, Various Officers)

FILING TAX:
Assignments of unrecorded mortgage by National Bank 51
Authority of Probate Judge to inquire into real value of instrument 51
Conditional sale contract—assigned to National Bank 51
Mortgages—based on principal sum secured 216

FILLING STATIONS:
Licenses—additional pumps 154

FINANCIAL INSTITUTIONS:
Licenses—Credit Unions liable for 104
Taxation—measurement of excise tax 122
(See Banks and Banking)

FINE AND FORFEITURE FUND:
Clerks' and Sheriffs' fees—nol prossed felony cases in county court 128
Clerk of circuit court—fee for preparing transcript in habeas corpus appeal 115
Costs—payment where defendant confesses judgment 150
Costs—payment on appeal 145
Fine where defendant works out hard labor for State 188
(See Costs, Fees)

FINES:
Convict Department entitled to in hard labor cases 188
Judges, may not remit 138
Payable in money only 193
Violations of State Milk Control Law 53

INDEX—Continued

FORESTS AND FORESTRY DEPARTMENT:
State Commission—salary 31

FRANKLIN COUNTY:
Solicitor, Law and Equity Court—extra compensation allowed 127

"G"

GAME AND FISH:
Chairman, Alabama Oyster Commission—expense allowance 11
Department of Conservation—expense allowance of Commissioner and employees 11

GASOLINE:
Tax—cannot be used to pay toll bridge operator 36
Tax—counties cannot use to erect hospital 206
Tax—use of in payment of past incurred indebtedness 50
Tax—use of to pay Commissioners Court, Clay County 16
Warrants—Jackson County—discussed 131

GENERAL ACTS:
(See Acts)

"H"

HABEAS CORPUS:
Appeals—bail 61
Appeals—clerk's fee for preparing transcript 115

HIGHWAY AND HIGHWAY DEPARTMENT:
Bridges—toll—pay of operator 36
Chilton County road supervisor—Act creating office of construed 84
Counties—use of gasoline tax in payment of past incurred indebtedness for roads and bridges 50
Operation of house or boat trailer on 213
Speed of vehicles used for transportation of property 135
(See Motor Carriers, Motor Vehicles)

HARD LABOR:
Costs on appeal—payment of 205
Costs—payment by State 181
Fine paid to Convict Department 188

"I"

INDETERMINATE SENTENCE LAW:
Revocation of parole under 176

INFERIOR COURTS:
Issuance of execution 35

INSANITY:
Sheriff's fees—feeding and caring for insane prisoners 95
Taxation—amount of exemption 67

INTEREST:
Computation of on delinquent tax 105

INDEX—Continued

INTOXICATING LIQUORS:
Sheriffs—fees for seizure 59

"J"

JACKSON COUNTY:
Warrants discussed 131

JAILS:
Counties—liability of for fuel and water 146
County may levy special tax to purchase lot for 129
Guard—employment where jail insecure 220

JASPER HOMESTEADS, INC.
Property—exemption of from taxation 136

JUDGES:
Bailiffs of Circuit Courts—appointment of 168
Without power to remit fines or grant probation 138

JUDGES OF PROBATE:
Clerical assistance—payment 62
DeKalb County—payment of debt to sheriff 221
Fees—changing ownership of automobile tag 158
Fees—law fixing construed 165
Filing tax—authority to inquire into real value of property conveyed ... 51
May draw warrant to transfer funds to Public Welfare Department for support of poor 97
No authority to transfer voter's name to other precinct 195
Not authorized to reinstate voter stricken from list by Board of Registrars 78
Required to attest satisfaction of mortgages under Section 9023—fees for 24
Voters list—entitled to 2½c per name for compiling 109
Voters lists for inspectors of elections—no compensation for preparing 109

JURIES:
Sheriffs' fees—summoning in capital cases 95

JURISDICTION:
Municipal Court, Limestone County 160

JUSTICES OF THE PEACE:
Grove Hill, Alabama—number of 143
Nomination and election, time of 143

JUVENILES:
Costs and fees of sheriffs—juvenile cases 95
Sheriffs' fees—feeding and caring for juvenile prisoners 95

"L"

LABOR:
Commissioner—authority to enter factories 43

LEGISLATURE:
May adopt rules concerning use of public waters 69
May enact laws regulating qualifications of newspapers 106

INDEX—Continued

LIBRARY TAX:
Tuscaloosa County—construction and application of Act....112

LICENSE TAGS:
Probate Judge—fees for changing ownership of....158

LICENSES:
Automobile dealers—repairing batteries....184
Automobile tags—fees for changing ownership of....158
Batteries—automobile dealers repairing....184
Coal dealers—no half year license....212
Contractors and construction companies—half year license....157
Contractors—penalty for operating without....39
Cotton warehouses—how computed....159
Credit Unions....104
Driver's license—prosecution of persons under sixteen....21
Farm tractors....200
Filling stations—pumps....154
Live stock dealer....130
Non-residents operating private motor vehicles....13
Peddlers—buying and returning to place of business....123
Stores—public warehouses as....183
Taxicabs must operate only in city....30
Trailers—Schedule 158.13—applicable to....5
Transient dealers—buying certain articles for resale at home....55
Transient dealers—shingle manufacturer....130
(See Taxation)

LIMESTONE COUNTY:
Municipal Court—jurisdiction....160

LIVE STOCK:
Dealers in—licenses....130

LOCAL ACTS:
(See Acts.)

"M"

MARION COUNTY:
Board of Education—qualifications of candidate for....119

MILK CONTROL BOARD:
Fines for violations of General Act of 1935, p. 219....53

MOBILE COUNTY:
Act authorizing tax redemption clerk valid....211
Board of Registrars—time of session—notice to voters....197
May prescribe scope of minutes....93

MONTGOMERY COUNTY:
Board of Revenue—appropriation to American Legion Convention—hospital expenses of employees—extra compensation of certain officers....44
Board of Revenue—authority to pay for preparation of plat book....47

INDEX—Continued

MORTGAGE TAX:
(See Filing Tax)

MORTGAGES:
Filing tax—based on principal sum secured 216

MOTOR CARRIERS:
Contract carrier distributing newspapers on route 162

MOTOR VEHICLES:
Boat or house trailer—use on highways 213
Contract carriers—defined 162
Driver's license—prosecution of minor under sixteen years of age 21
Licenses—farm tractors 200
License—non-resident operating not for hire 13
Probate Judges' fees—changing ownership of tag 158
Semi-trailer defined—who are passengers on 124
Speed where used for transportation of property 135
Trailer—employee as passenger on 149
(See Highways, Highway Department)

MUNICIPALITIES:
Assessment of property bought at tax sale 134

"N"

NATIONAL REEMPLOYMENT SERVICE:
Counties may pay transportation charges of manager 116

NEWSPAPERS:
Act regulating qualifications as media of legal advertising, constitutional 106

"O"

OFFICERS AND OFFICES:
Declaration of candidacy—time for 178
Election managers and clerks—pay for counting absentee ballots 113
Members Board of Dental Examiners held State officers—term 186
(See Various Officers)

"P"

PEDDLERS:
Licenses—buying and returning to place of business 123
(See Transient Dealers)

PENSIONS:
Amendment to Old Age Assistance Act—constitutional 14

PLAT BOOKS:
Tax assessor—compensation of employee of for preparing 47
Tax assessors—compensation of third party for preparing 58

POLL TAX:
Tax collector may not receive after February 1st 7
(See Elections, Registration, Voters)

INDEX—Continued

PRISONERS:
Bail—appeals in habeas corpus proceedings 61
Counties—liability of for fuel and water 146
Hospitalization—where wounded in evading arrest 189
Sheriffs and bailiffs duty to 168
Sheriffs—compensation for feeding 139
Sheriffs' fees—feeding and caring for insane and juvenile 95
Sheriffs' fees for feeding prisoners in bastardy cases 95

PROBATION:
Judges, may not grant 138

PROPERTY:
Assessment in name of legal holder 202
Assessment—time and method of correction of 203
Assessment where sold to city 134
Costs—sale of land for partition 217
Co-tenant may not redeem to improve title 81
Foreign corporation buying and selling in Alabama—taxes on 194
Illegally assessed—no penalty for reassessment 202
Taxation—exemption of charitable organization 155
Taxation—exemption of factories erected prior to 1935 169
Taxation—exemption of Jasper Homesteads, Inc. 136
(See Redemption, Taxation)

PUBLICATION:
List of insolvents—cost 118, 121

PUBLIC SERVICE COMMISSION:
Clarke-Washington Electric Membership Corporation—regulation of 163
Non-profit membership corporation—regulation 163

PUBLIC UTILITIES:
Clarke-Washington Electric Membership Corporation, as 163
Contract carriers—party distributing newspapers as 162
Non-profit Membership corporations—regulation 163

PUBLIC WELFARE:
Counties—transfer of funds for support of poor 97
(See Welfare)

"R"

RADIO:
WAPI Station—liability for lighting towers 218

REDEMPTION:
Co-tenant may not redeem 81
(See Property, Taxation)

REGISTER IN CHANCERY:
Tuscaloosa County—no commission for collection of law library tax 112

REGISTRATION:
Board of Registrars—time of sessions 180
Board of Registrars, Wilcox County—time of meeting 215
Illegal—purging of voters' names from 157
Mobile County Board of Registrars—time of session—notice to voters 197
Person of foreign birth who has taken out first papers 35
Persons in United States Army and Navy 153

INDEX—Continued

REVENUE LAWS:

Acts of 1929:
Section 172 47

Acts of 1935:
License Schedule (Section 348, p. 441):
Schedule 12 ..... 184, 200
Schedule 20 184
Schedule 36.2 212
Schedule 42 ..... 39, 157
Schedule 67 154
Schedule 94 51
Schedule 146 123
Schedule 147 ..... 55, 130
Schedule 152 159
Schedule 158.3(c) 30
Schedule 158.13 5
Schedule 158.15 13
Section 2(f) 67
Section 3 169
Section 23 58
Section 47 ..... 28, 58
Section 54 58
Section 55 75
Sections 58, 59, 60 58
Section 161-A 70, 202
Section 178 ..... 118, 121, 134
Section 239 165
Section 345.10(f) 54
Section 346.1 ..... 104, 122
Section 346.3, 346.4 9
Section 353 39
Section 368 157
Section 370-A 62
(See Licenses, Taxation)

ROADS AND BRIDGES:
(See Highways, Highway Department, Gasoline, Motor Vehicles)

"S"

SCHOOLS:
Applications on rural schoolhouse fund when funds encumbered 5
Donations to by county under Acts 1931, p. 687 20
Elections—method of calling for levy of one mill and three mill taxes 77
Funds—city treasurer not entitled to salary for handling 26
List of insolvents—district to pay for publication 121
Reappropriation of funds for repairing 170
Special three mill district tax—collection of 111
State Teachers College—only State Board of Education may borrow money for use of 72
Trustees—selection—qualifications of nominees 88

INDEX—Continued

SCHOOL CODE OF 1927:
Section 58 72
Sections 253 and 261 77
Sections 474 to 480 72

SHERIFFS:
Compensation for feeding prisoners 139
DeKalb County—Local Act allowing additional deputy construed 185
DeKalb County—Payment of debt to 221
Deputies—witness fees 35
Fees—attendance upon Circuit, Probate and County Courts 92
Fees—entitled to $3.00 for seizure of liquor regardless of amount 59
Fees—feeding prisoners charged with bastardy 95
Fees—how collected in juvenile cases 95
Fees—nol prossed felony cases in county court 128
Fees—none allowed for attending Inferior Court 95
Fees—none allowed for waiting on non-jury term of court 95
Fees—per diem and mileage as witness 35
Fees—serving special jurors in capital cases 95
Fees—serving warrant, bond and summoning witness in non-support case 95
Insane and juvenile prisoners—pay for feeding and caring for 95
Prisoners—duty to safe-keep 168
Salary Act—effect of Sparks Amendment on 222

SHELBY COUNTY:
Local Act 1936, No. 88, H. 293, valid 139

SINKING FUNDS:
Counties—use of for current expenses 172

SOLICITORS:
Fees—Conecuh County 18
Fees—violations Section 5, Alabama Motor Carrier Act of 1932 27
Franklin County Law and Equity Court—extra compensation 127

SPARKS AMENDMENT:
Effect on Section 239 of Revenue Laws 165
Effect on Sheriff's salary—Acts 1931, p. 64 222

STATE:
List of insolvents—payment for publication of 121

STATE BOARD OF EDUCATION:
Proper authority to borrow money and execute note for Normal Schools 72

STATE BOARD OF PHARMACY:
Enforcement of Barbituric Act—promulgation of rules—use of State funds 68

STATE DOCKS COMMISSION:
Advertisement of—subscription to Mobile Chamber of Commerce 151

STATE TOXICOLOGIST:
Exhumation—authority with regard to 38

INDEX—Continued

STATUTES:
Act authorizing clerical assistance to county treasurer valid 147
Act regulating public waters held constitutional 69
Act relieving tax collector of Coffee County, constitutional 101
Chilton County—Local Act creating office of road supervisor construed 84
Chilton County—Local Act relating to agricultural fund constitutional 116
Chilton County—No. 3, H. 3, Acts 1936, constitutional 64
Department of Labor Law construed 43
Local Act of Chilton County, 1936, unconstitutional 210
Local Act of 1936, Shelby County, valid 139
Mobile County—Act authorizing tax redemption clerk valid 211
Regulation of legal advertisements—Acts 1935, p. 791, constitutional 106
Section 239, 1935 Revenue Laws, effective date 165
Sheriff's salary—Acts 1931, p. 64 222
Tax Collectors—Act fixing maximum expenses 202
Tuscaloosa County Law Library Fund—effective date and application of Act 112
(See Constitutionality)

"T"

TAX ASSESSORS:
Book of assessments—necessity for making 75
Duty to assess property on discovery 8
Fees and compensation discussed generally 58
Plat books—fees of employee for preparation 47

TAX COLLECTORS:
Allowance on wrongfully assessed city property 134
Coffee County—Act relieving, constitutional 101
Compensation in counties where paid on fixed salary basis 70
Expenses—effective date of Act fixing maximum 202
Fees—law fixing construed 165
Law requiring publication of list of insolvents, construed 118
Poll tax—may not receive after February 1st 7
Publication of list of insolvents—cost 121

TAX SALE:
Assessment of city property bought at 134
Effect of quitclaim deed from purchaser to original owner 74

TAXATION:
Assessment—how and when corrected 203
Assessment—in name where legal title reposes 202
Assessment of stocks of goods for part year's taxes 8
Board of Review—mileage for attending sessions 171
City—assessment of property owned by 134
Conditional sale contract assigned to National Bank—registration tax 51
Corporations—income from contract with United States 54
Exemptions—factories erected prior to 1935 169
Exemptions—insane persons—amount 67
Exemption—property of charitable organization 155
Exemption—property owned by Jasper Homesteads, Inc. 136
Financial institutions—excise not required where absorbed 9
Financial Institutions—excise tax on 122

INDEX—Continued

TAXATION:—(Continued)

Foreign corporations—buying and selling real estate in Alabama 194
Interest—method of computing on delinquent tax 105
Law Library Tax, Tuscaloosa County 112
List of insolvents—publication and cost of 121
Lists of insolvents—section requiring publication, constitutional 118
Notice—unnecessary where assessment not raised 28
Purchasing lot for jail—special tax for 129
Reassessment—no penalty for 202
Redemption—co-tenant may not redeem 81
Schools—method of calling elections for levy one mill and three mill taxes 77
Special three mill district school tax—collection of 111
Tax collector—maximum expenses of 202
Tax sales—effect of quitclaim deed from purchaser to original owner 74
Trial tax—National Banks exempt from 213
(See Filing Tax, Gasoline, Licenses, Redemption, Tax Sales)

TAXICABS:
License—scope of operation 30

TOLL BRIDGES:
Operator's salary 36

TRAILERS:
House or boat trailer as 213
Passengers—employees as 149
Schedule 158.13 of 1935 Revenue Bill applicable to 5
Semi-trailer—defined—employees of truck owner riding on 124
Speed 135

TRANSIENT DEALERS:
Licenses—buying products for resale at home 55
Licenses—shingle manufacturer 130
(See Peddlers)

TREASURER:
City—not entitled to salary for handling school funds 26
Counties—expenses for making deposits and cutting coupons 66
County—clerical assistance 147

TRIAL TAX:
National Banks exempt from 213

TUSCALOOSA COUNTY:
Act establishing Law Library—effective date—application—register's commissions 112

"U"

UNEMPLOYMENT COMPENSATION LAW:
Election to become subject to—refund of contributions of employees 190

INDEX—Continued

VOTERS:
Board of Registrars—time of session 180
Illegal registration—purging of names 157
Lists—probate judge entitled to 2½c per name for compiling 109
Mobile County—registration—notice 197
Poll tax—may not pay after February 1st 7
Precinct liner may select beat 83
Probate judge not authorized to reinstate where stricken from list by Board of Registrars 78
Registration—person of foreign birth 35
Residence—persons in United States Army and Navy 153
Temporary removal from one precinct to another—effect of 57
Transfer of name to other precinct 195

"W"

WAPI RADIO STATION:
Lighting towers—liable for 218

WAREHOUSES:
Licenses—as chain store 183
Licenses—storing cotton 159

WARRANTS:
Issuance of to sheriffs as compensation for feeding prisoners 139
Jackson County—discussed 131

WATERS:
Act defining public bodies of water constitutional 69

WILCOX COUNTY:
Board of Registrars—time of meeting 215

WITNESSES:
Fees—sheriffs entitled to per diem and mileage 35

WORDS AND PHRASES:
"Adopted" 165
"Common carrier"—taxicabs 30
"Confines" of dentist's office 186
"Contract carriers"—distribution of newspapers 162
"Credit Unions"—as financial institutions 104
"Employee"—"employer"—under Unemployment Compensation Law 190
"House or boat trailer" as trailer 213
"Live stock dealer" 130
"Net income" of financial institutions 122
"Officers or employees of Federal Government"—corporation as 54
"Other self-propelled vehicles"—farm tractors as 200
"Passenger"—on semi-trailer 124
"Passenger"—on trailer 149
"Trailer"—not semi-trailer 124